Supreme Court, U.S.
FILED

(2)

No. 95 1050 DEC 28 1995

OFFICE OF THE CLERK

THE SUPREME COURT OF THE UNITED STATES

(October Term 1995)

PEOPLES BANK OF
BLOOMINGTON,
as Successor Trustee of trusts
created by the Will of George F.
Dick, Jr., deceased, and as Trustee
of trusts created by the Will of
Althea M. Dick, deceased,
Plaintiff,

vs.

GEORGE F. DICK III, et al.,
Defendants,

(Helen A. Dick,
Petitioner-Appellant,

vs.

Peoples Bank of Bloomington,
Respondent-Appellee).

On Petition from the Illinois Supreme Court
for Review on a Writ of Certiorari

SEPARATE APPENDIX

(to Petition for Writ of Certiorari)

Helen A. Dick, pro se
3323 - 13th Ave. Court
Moline, Illinois 61265-3329
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2/4 pp

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ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

79067

October 4, 1995

Ms. Helen A. Dick
3323 13th Avenue Court
Moline, IL 61265

No. 79067 - Peoples Bank of Bloomington, etc., respondent, v. George F. Dick, III et al. (Helen A. Dick, petitioner). Leave to appeal, Appellate Court, Fourth District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 26, 1995.

STATE OF ILLINOIS
APPELLATE COURT
FOURTH DISTRICT
SUPREME COURT BUILDING
SPRINGFIELD 62701-1792

CLERK OF THE COURT
(217) 782-2586

RESEARCH DIRECTOR
(217) 782-3528

Appeal from the Circuit Court of County of McLean

Trial Court No.: 82CH124

THE COURT HAS THIS DAY, 04/12/95, ENTERED THE FOLLOWING ORDER IN THE CASE OF:

Gen. No.: 4-94-1069

People's Bank Of Bloomington Et Al. V. Dick, Helen A.

Appellant's motion for reconsideration and to vacate order obtained by fraud is DENIED.

DARRYL PRATSCHER
Clerk

cc: Helen A. Dick
3323 - 13th Ave. Court
Moline, IL 61265

John E. Fick
Samuels, Miller, Schroeder, Jackson & Sly
406 First of America Center, P. O. Box 1400
Decatur, IL 62525

STATE OF ILLINOIS
APPELLATE COURT
FOURTH DISTRICT
SUPREME COURT BUILDING
SPRINGFIELD 62701-1792

CLERK OF THE COURT
(217) 782-2586

RESEARCH DIRECTOR
(217) 782-3528

Appeal from the Circuit Court of County of McLean
Trial Court No.: 82CH124
THE COURT HAS THIS DAY, 03/15/95, ENTERED THE FOLLOWING ORDER IN THE CASE OF:

Gen. No.: 4-94-1069

People's Bank Of Bloomington Et Al. V. Dick, Helen A.

Appellee's motion to dismiss appeal is ALLOWED, OVER OBJECTION. APPEAL DISMISSED for lack of jurisdiction.

DARRYL PRATSCHER
Clerk

cc: Helen A. Dick
3323 - 13th Ave. Court
Moline, IL 61265

John E. Fick
Samuels, Miller, Schroeder, Jackson & Sly
406 First of America Center, P. O. Box 1400
Decatur, IL 62525

Sandra K. Parker
Circuit Clerk, McLean County

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, et al., Defendants.	)	

ORDER AS TO PETITION FOR REIMBURSEMENT
FOR ATTORNEYS FEES (SUPREME COURT RULE 137)
OF PEOPLES BANK AND TRUST BENEFICIARY
HELEN A. DICK'S AFFIDAVIT IN RESPONSE THERETO

The Petition of People Bank of Bloomington as Successor Trustee of Trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of Trusts created by the Will of Althea M. Dick, deceased, for reimbursement for attorneys fees under Supreme Court Rule 137 was filed herein on or about December 23, 1994. Trust Beneficiary Helen A. Dick has filed an Affidavit in Response to Peoples' said fee petition on or about December 28, 1994. These matters now come before the Court for resolution.

The Court is informed by Helen A. Dick's Affidavit and correspondence from Peoples Bank's counsel that Helen A. Dick has remitted the sum of $5,276.00 to Peoples Bank of Bloomington, the approximate sum claimed by the Bank in its fee petition, for the purpose of buying her peace, in lieu of

asserting defenses or requiring a hearing thereon.

WHEREFORE, the Court being fully advised in the premises FINDS the issues made in the Bank's said fee petition have been resolved by the conduct of the parties, and there are no other disputed issues remaining to be determined in this cause. Case closed.

DATED: Jan. 4, 1995

ENTER:

W. CHARLES WITTE

W. CHARLES WITTE, Circuit Judge

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, et al., Defendants.	)	

JUDGEMENT ORDER

On September 1, 1994, Peoples Bank of Bloomington, Plaintiff/Respondent herein appears by its counsel of record, John E. Fick, and its Trust Officer and personal representative, Owen Mair. There also appears pro se Helen A. Dick, Defendant/Petitioner. Whereupon hearings are held on pending matters of the parties. The first matter heard is the Vertified Petition for Change of Venue to Woodford County of Helen A. Dick, Defendant/Petitioner. The Court considers said Verified Petition for Change of Venue and also the Memo of Helen A. Dick submitted in support thereof, together with the arguments of the parties, and being fully informed in the premises the Court FINDS that the Verified Petition for Change of Venue to Woodford County of Helen A. Dick, Defendant/Petitioner, should be and is denied.

WHEREFORE, the Verified Petition for Change of Venue to Woodford County of Helen A. Dick, Defendant/Petitioner is denied.

Next, on the 1st day of September, 1994, there comes on for hearing the Motion for Involuntary Dismissal - 735 ILCS 5/2-619(a)(4)(5) and Motion for Attorneys Fees - Supreme Court Rule 137 of Peoples Bank of Bloomington, Plaintiff/ Respondent, and the Court considers said Motions together with Petitioner Helen A. Dick's written Opposition to Peoples Bank's Motion for Involuntary Dismissal as well as Petitioner Helen A. Dick's Motion for Sanctions under Supreme Court Rule 137 and further, the Court considers all the arguments of the parties and being fully informed in the premises FINDS that the Motion for Involuntary Dismissal - 735 ILCS 5/2-619(a)(4)(5) of Peoples Bank should be and is allowed.

WHEREFORE, the Motion for Involuntary Dismissal - 735 ILCS 5/2-619(a)(4)(5) of Peoples Bank, Plaintiff/Respondent, is allowed, and the Verified Petition of Helen A. Dick, Defendant/Petitioner, to Vacate Order(s) Obtained by Fraud Upon the Court is hereby denied and judgment is entered herein in favor of Peoples Bank of Bloomington, Plaintiff/ Respondent, and against Helen A. Dick, Defender/Petitioner.

The Court retains jurisdiction limited to a consideration of the Peoples Bank of Bloomington's Motion for Attorneys Fees - Supreme Court Rule 137. The Court directs Peoples Bank to support its Motion by documentation of any costs and attorneys fees claimed reasonably to have been incurred by Peoples Bank in defending against the Petitions of Helen A. Dick filed herein. Within seven (7) days of receipt of such documentation from Peoples Bank, Helen A. Dick, Defendant/Petitioner, may make any response she sees fit. Thereafter, the Court will determine whether further hearing should be held or it may find that the issues made in said Motion of Peoples Bank for relief under Rule 137 should be determined on the record then and there established by the parties, and shall act accordingly.

DATED: September 26, 1994.

ENTER:

W. CHARLES WITTE

W. CHARLES WITTE, Circuit Judge

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, et al., Defendants.	)	

STIPULATION

NOW COME PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and the Will of Althea M. Dick, deceased, plaintiff-counterdefendant, by Samuels, Miller, Schroeder, Jackson & Sly, its attorneys, and GEORGE F. DICK III, defendant-counterplaintiff, by Albert H. Hoopes and Tenney, Tietz & Heavner, his attorneys, and hereby stipulate that the claims and causes of actions and counterclaims of said parties now pending in this cause have been fully compromised and settled and, therefore, this cause should be dismissed as to these parties with prejudice.

PEOPLES BANK OF BLOOMINGTON,
as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased

By SAMUELS, MILLER, SCHROEDER, JACKSON & SLY

By JOHN E. FICK
Its Attorneys

GEORGE F. DICK III, by his attorneys

ALBERT H. HOOPES
(Albert H. Hoopes)

TENNEY, TIETZ & HEAVNER
By CHRISTOPHER TIETZ

* * * *

ORDER

THIS CAUSE comes on for hearing on the Stipulation of PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Wills of George F. Dick, Jr., deceased, and Althea M. Dick, deceased, by Samuels, Miller, Schroeder, Jackson & Sly, its attorneys, and GEORGE F. DICK III, by Albert H. Hoopes and Tenney, Tietz & Heavner, his attorneys. The Court is fully informed in the premises; therefore,

IT IS ORDERED that the above and foregoing cause as to all pending counts involving causes of actions, claims or counterclaims by and between the parties to the said Stipulation be dismissed with prejudice, each said party to pay its or his own costs; costs are paid.

DATED this 14th day of March, 1984.

ENTER:

RICHARD M. BANER
Judge

IN THE CIRCUIT COURT FOR THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, BLOOMINGTON, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, et al., Defendants.	)	

ORDER

Count I

As to Count I the Court finds that a distribution of the remainder interest of "Peoples Bank" shares effective on the date of death of Althea M. Dick (October 10, 1976) should have been in the amount of 2,400 shares. I further find that any assignment of interest in shares by Althea Dick prior to her death was violative of the limiting provisions of the Will of George F. Dick, Jr. Summary Judgement is therefore entered in favor of the defendant as to the issue of remainder distribution of principal. Summary Judgement is entered in favor of the plaintiff as to the issue of assignment. The defenses of res adjudicata, estoppel, latches or statute of limitation are not established.

The prayer for accounting is allowed as it relates to the period of March 31, 1959 to October 10, 1976 and as to all shares during such period. Ruling is reserved as to remaining issues.

Count II

Both motions for Summary Judgment are denied.

Count III

Motion of plaintiff for Partial Summary Judgment is denied except as to a partial judgment and/or finding that the plaintiff has established a prima facie case that a breach of trust by the defendant has occurred (See Illinois Evidence Manual, Gard, Section 5:11). To the extent the motion seeks additional relief it is denied. To the extent they relate to the above finding the defenses of latches, Chapter 17, Section 1684(2) and res adjudicata are not established.

Count IV

I find that under the peculiar facts of this cause, to the extent they are now before the Court, the plaintiff is not bound under res adjudicata by the final discharge order in the Estate of Althea Dick. I note particularly the corporate responsibility and position of the defendant at relevant times.

The motion of the defendant for Summary Judgment is denied. The defenses of latches and res adjudicata are not established.

The motion of the plaintiff for Partial Summary Judgment is denied except as to a Partial Judgment and/or finding that the transaction described appears on its face to be other than at arms length and for a purpose which was not in the best interest of the trust. The burden of proof therefore has shifted to the defendant. To the extent the motion seeks other relief it is denied.

ENTERED: March 2, 1984

RICHARD M. BANER

Richard M. Baner
Circuit Judge

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
WOODFORD COUNTY, EUREKA, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, et al., Defendants.	)	

ORDER

1. February 15, 1984 defendant Helen A. Dick files Affidavit in Support of Plaintiff's Motion for Partial Summary Judgement and Affidavit in Opposition to George F. Dick III's Motion for Summary Judgement.

2. Objection by George F. Dick, III to standing of Helen A. Dick to argue Motions for Summary Judgment on Counts I, II, III and IV of the Complaint entitled Construction of Testamentary Trusts herein filed by the original plaintiff.

3. Arguments heard.

4. The Court finds Helen A. Dick is not a party to the causes of action alleged by the original plaintiff in said Counts I, II, III and IV, and in the absence of agreement of the parties to said counts may not independently submit factual matters or present argument relative to pending Summary Judgment Motions.

ENTERED: February 21, 1984

RICHARD M. BANER

Richard M. Baner
Circuit Judge

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, HELEN M. DICK, ELEANOR DICK LYON, HELEN A. DICK YEAGER, a/k/a HELEN A. DICK and HELEN A. DICK, JR., LLOYD R. YEAGER JR., CAROLINE M. DULANEY, ROBERT F. YEAGER, GEORGE D. YEAGER, JAMES DICK and GEORGE F. DICK IV, Defendants.	)	

CONSTRUCTION OF TESTAMENTARY TRUSTS

Plaintiff, PEOPLES BANK OF BLOOMINGTON, as successor trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as trustee of trusts created by the Will of Althea M. Dick, deceased, names George F. Dick III, Helen M. Dick, Eleanor Dick Lyon, Helen A. Dick Yeager, a/k/a Helen A. Dick, and Helen A. Dick, Jr., Lloyd R. Yeager, Jr., Caroline M. Dulaney, Robert F. Yeager, George D. Yeager, James Dick and George F. Dick IV as defendants.

COUNT I

For its Count I against defendant, GEORGE F. DICK III, plaintiff alleges:

1. George F. Dick, Jr. died May 8, 1955 leaving a will dated July 14, 1953, which was admitted to probate in the County, now Circuit Court, of McLean County. His heirs, devisees and legatees were Althea M. Dick, his wife, and defendants Eleanor D. Lyon, Helen M. Dick, Helen A. Dick Yeager and George F. Dick III, his children. Helen A. Dick Yeager was the child of Eleanor D. Lyon and the adopted child of George F. Dick, Jr. and Althea M. Dick. A copy of the will of George F. Dick, Jr. is attached as Exhibit A.

2. Althea M. Dick (who died in 1976) and George F. Dick III were named and served as executors of the will of George F. Dick, Jr. until the final report of the executors on or about July 5, 1956. George F. Dick III was named and served as trustee of the trusts created by the will of George F. Dick, Jr. until December 26, 1978, when he resigned, and plaintiff became successor trustee.

3. Althea M. Dick died October 10, 1976, leaving a will dated January 23, 1969, which was admitted to probate in the Circuit Court of McLean County. Her heirs, devisees and legatees were the four defendants named in paragraph 1 supra. A copy of the will of Althea M. Dick is attached as Exhibit B. A chart showing family relationships is attached as Exhibit C to this complaint.

4. Defendant, George F. Dick III was named and served as executor of the will of Althea M. Dick until discharged January 15, 1979, when plaintiff became trustee of the trusts created by the will of Althea M. Dick.

5. George F. Dick III is an attorney. He was employed by plaintiff as Assistant Trust Officer in 1947, became a Vice President and member of the Board of Directors in 1950, Executive Vice President in 1960, President in 1962, Chairman of the Board of Directors in 1976, and retired from the plaintiff bank in February of 1981.

6. The will of George F. Dick, Jr. contained the following, among other, provisions:

> I hereby give a life estate in all of my property to my wife, Althea M. Dick, she to

have the full possession and sole management thereof as long as she shall live.

I also empower my wife, Althea M. Dick, to have authority to sell, transfer and convey any of the assets in my estate during her lifetime which she may think is for the best interest of my estate and I waive the requirements of furnishing bond by her in said sales and the purchaser is not required to see to the proper application of the purchase money.

After the death of my wife, Althea M. Dick, the remaining Executor of this Will shall transfer and assign to my son, George F. Dick, III, Eighty (80) Shares of the Capital Stock of the Peoples Bank of Bloomington as and for his individual property.

All the rest and residue of my estate remaining shall pass to my son, George F. Dick, III, as Trustee, for the benefit of my children, Helen Dick, Eleanor Dick Lyon, and Helen A. Dick, under the terms and conditions hereinafter set forth.

* * * *

I desire my son, George F. Dick, III to vote any and all Capital Stock of the Peoples Bank of Bloomington in said Trust during the life of said Trust.

* * * *

No interest under this Will shall be transferable or assignable by any beneficiary (except by the Wills of Helen Dick and Helen A. Dick as provided above) or subject to the claims of their creditors, and all income distributions shall be paid to each beneficiary in person and not on any written order or assignment from any beneficiary.

7. Upon the date of his death in 1955 George F. Dick, Jr. was the owner of 91 shares of stock of plaintiff. On or about March 31, 1959, 80 shares of stock of plaintiff bank were transferred from the trust estate created by the will of George F. Dick, Jr. to George F. Dick III, who enjoyed the benefits of full ownership of such stock from that date on.

8. On or about August 1, 1967, there was a 30 for 1 split of plaintiff's stock, and on or about June 3, 1972, all of plaintiff's shares (except director's qualifying shares) were exchanged on a 1 for 1 basis for shares of Peoples Mid-Illinois Corporation, a Delaware corporation and a one bank holding company, and on or about April 17, 1978, there was a 3 for 1 stock split of the shares of Peoples Mid-Illinois Corporation.

9. Plaintiff is uncertain whether under a proper construction of the will of George F. Dick, Jr.:

(a) It was proper for George F. Dick III, the trustee and defendant herein, to accept and enjoy the benefits of said 80 shares of plaintiff prior to the death of Althea M. Dick in 1976.

(b) George F. Dick III should have received 80 shares of stock of plaintiff upon the death of Althea M. Dick in 1976 rather than the 2,400 shares resulting from the 30 for 1 stock split which occurred in 1972.

WHEREFORE, plaintiff prays:

A. That the Court construe the will of George F. Dick, Jr. with regard to questions raised in paragraph 9 supra.

B. If it was improper for defendant George F. Dick III to receive and enjoy the benefits of the bank shares prior to 1976 or if defendant George F. Dick III should have received 80 [rather than 2,400] shares in 1976, that defendant George F. Dick III be ordered and directed to account to plaintiff as successor trustee for the benefit of the beneficiaries for all stock or monies owing the trust estate.

C. That the Court grant such other relief as may be just

and proper, including a judgment for plaintiff's costs and attorney fees.

COUNT II

For its Count II against the defendant, GEORGE F. DICK III, plaintiff alleges:

1, 2, 3, 4, 5 and 6. Plaintiff realleges paragraphs 1, 2, 5, 6, 7 and 8 of Count I as paragraphs 1 through 6 of this Count II.

7. The 11 shares of stock of plaintiff bank which were owned by George F. Dick, Jr. at the time of his death and which were not included in the conveyance to George F. Dick III in 1959, had become 330 shares as a result of a 30 for 1 split of stock of plaintiff bank, and the 1 for 1 exchange on or about June 3, 1972, converted said shares into shares of Peoples Mid-Illinois Corporation.

8. In or about October of 1972, defendant George F. Dick III induced his sister, defendant Helen M. Dick, to borrow $20,625 from plaintiff bank, which sum was deposited in the trust account of the trust created by the will of George F. Dick, Jr. As a part of the same transaction, George F. Dick III induced his mother, Althea M. Dick, to sell said 330 shares of Peoples Mid-Illinois Corporation to Helen M. Dick; he then issued a check from said trust account in the sum of $20,625 to Helen Dick, and Helen Dick assigned said 330 shares to George F. Dick III as trustee under the will of George F. Dick, Jr. Helen Dick used the $20,625 check from the trust account to repay her loan to plaintiff bank. George F. Dick III as trustee paid $111 interest on Helen Dick's above-referred to loan from trust funds.

9. Plaintiff is uncertain whether the above-described transaction was for a proper trust purpose and authorized under the will of George F. Dick, Jr., and if not, whether such transaction resulted in any loss or damage to any trust beneficiary.

WHEREFORE, plaintiff prays that this Court determine whether under a true construction of the will of George

F. Dick, Jr. the described transaction was proper, and if not, whether any loss resulted to any trust beneficiary, and if so, that judgment be entered against said defendant or defendants and that plaintiff have such additional relief as may be just and proper.

COUNT III

For its Count III against defendant, GEORGE F. DICK III, plaintiff alleges:

1-5. Plaintiff realleges paragraphs 1 through 5 of its Count I herein as paragraphs 1 through 5 of this Count III.

6. The records maintained by defendant George F. Dick III disclose that commencing on or about June 11, 1971, and continuing until June 19, 1978, he, as trustee under the will of George F. Dick, Jr. failed to invest the trust funds he held, but in fact made unsecured loans to himself and to his then wife, Marilyn Dick, totalling $112,900, the largest unsecured sum outstanding at any particular time, being $88,900 from September 20, 1977 until June 18, 1978. The records maintained by defendant George F. Dick III further disclose that payments designated as principal or interest or both were made from time to time to George F. Dick III as trustee, with a final payment of $88,900 on June 19, 1978. A summary of the dates and amounts of said loans and repayments as shown by the records maintained by George F. Dick III is attached hereto as Exhibit D.

7. The use of trust funds by defendant George F. Dick III, referred to in the preceding paragraph, was a gross breach of defendant George F. Dick III's duties as trustee of the trusts created by the will of George F. Dick, Jr.

8. The trusts created by the will of George F. Dick, Jr. have suffered large losses, and George F. Dick III has profited as a result of his breaches of trust, and said defendant should account to the trusts and plaintiff as successor trustee for all such profits and for all losses suffered by the trusts.

WHEREFORE, plaintiff prays:

A. That the Court order and direct defendant George F.

Dick III to account to the plaintiff as successor trustee for all profits or gains accruing as a result of any use by either George F. Dick III or Marilyn Dick of any funds of the trusts created by the will of George F. Dick, Jr.

B. That the Court determine the amount of the losses sustained by the trust estates resulting from the use of trust funds by said defendant and his then wife, Marilyn Dick.

C. That the Court enter judgment against defendant George F. Dick III for any profits made by defendant George F. Dick III and/or his then wife Marilyn Dick, and for all losses sustained by the trusts resulting from such use of trust funds by said defendant and/or Marilyn Dick.

D. That the Court enter its judgment for exemplary damages against said defendant George F. Dick III, if the Court finds such damage justified.

E. That the Court grant such other relief as may be just and proper, including exemplary damages if justified by the evidence herein, and judgment for plaintiff's costs and attorney fees.

COUNT IV

For its Count IV against defendant, GEORGE F. DICK III, plaintiff alleges:

1-5. Plaintiff realleges paragraphs 1 through 5 of Count I as paragraphs 1 through 5 of this Count IV.

6-7. Plaintiff realleges paragraphs 7 and 8 of Count I as paragraphs 6 and 7 of this Count IV.

8. On or about June 27, 1977, defendant, George F. Dick III, as executor of the estate of Althea M. Dick, sold 500 shares of stock of Peoples Mid-Illinois Corporation for $45,000 to Peoples Mid-Illinois Corporation, the one bank holding company which had acquired all the stock of Peoples Bank of Bloomington. This sale was not necessary for the proper administration of the estate of Althea M. Dick.

9. In view of George F. Dick III's position as Chairman of the Board of Peoples Mid-Illinois Corporation, as well as executor of the Estate of Althea M. Dick, this does not appear to be an arms length transaction, and George F. Dick should

be required to show that this sale was for a proper trust purpose and for a proper price.

10. A few months after this sale, the stock of Peoples Mid-Illinois Corporation was split 3 for 1, resulting along with other things in a substantial increase in value of said stock. George F. Dick III, as bank Chairman, knew or should have known of these developments and he failed to preserve the estate assets.

WHEREFORE, plaintiff prays judgment against defendant George F. Dick III for the amount, if any, by which the fair cash market value of said shares of Peoples Mid-Illinois Corporation exceeded the sum of $45,000 for which they were sold on or about June 27, 1977 and that plaintiff have such other and further relief as may be just and proper.

COUNT V

For its Count V against all defendants plaintiff alleges;

1-5. Plaintiff realleges paragraphs 1 through 5 of Count I for paragraphs 1 through 5 of this Count V.

6. The will of George F. Dick, Jr. contained the following among other provisions:

> My wife, Althea M. Dick, in her will has established a Trust similar to the one I have established here and I authorize the Trustee in each of said Wills to consolidate the Trust in my will and my wife's Will and to operate it as one Trust Estate.

7. Plaintiff has no other knowledge as to whether Althea M. Dick had such a will in or about the time in 1953, when George F. Dick, Jr. executed his will, whether or not Althea M. Dick was contractually obligated to execute a similar will, and if so whether the will referred to in paragraph 3 supra complies with such contractual obligation, if any.

WHEREFORE, plaintiff seeks the aid and assistance of the Court in determining whether the will of Althea M. Dick should have been admitted to probate and the trusts therein provided created or whether the net estate of Althea M. Dick

should go into the trust created by the will of George F. Dick, Jr., and for such other relief as may be just and proper.

COUNT VI

For its Count VI against GEORGE F. DICK III, HELEN M. DICK, ELEANOR DICK LYON, HELEN A. DICK YEAGER, LLOYD R. YEAGER, JR., CAROLINE M. DULANEY, ROBERT F. YEAGER, GEORGE D. YEAGER, JAMES DICK and GEORGE F. DICK IV, plaintiff alleges:

1-5. Plaintiff realleges paragraphs 1 through 5 of Count I as paragraphs 1 through 5 of this Count VI.

6. Certain of the above defendants claim that defendant George F. Dick III, as trustee of the trusts created by the will of George F. Dick, Jr. and/or as executor of the will of Althea M. Dick, improperly commingled the assets of said estates and also disposed of assets of said estates which he should have continued to hold, and disposed of such assets for less than their fair cash market value and committed various other breaches of trust prior to the time or times plaintiff became successor trustee of the George F. Dick, Jr. trust and trustee of the Althea M. Dick trusts.

WHEREFORE, plaintiff prays for discovery as to the nature and validity of the claims, if any, of said defendants and for such other and further relief against said defendants as may be just and proper.

COUNT VII

For its Count VII against GEORGE F. DICK III, HELEN M. DICK, ELEANOR DICK LYON, HELEN A. DICK YEAGER, LLOYD R. YEAGER, JR., CAROLINE M. DULANEY, ROBERT F. YEAGER, GEORGE D. YEAGER, JAMES DICK and GEORGE F. DICK, IV, plaintiff alleges:

1-3. Plaintiff realleges paragraphs 1, 2 and 5 of its Count I for its paragraphs 1-3 of this Count VII.

4. The will of George F. Dick, Jr. contained the following, among other provisions:

> All the rest and residue of my estate

remaining shall pass to my son, George F. Dick, III, as Trustee, for the benefit of my children, Helen Dick, Eleanor Dick Lyon, and Helen A. Dick, under the terms and conditions hereinafter set forth.

* * * *

The Income from said Trust Estate shall be divided into three equal parts and one part paid to each of my three daughters hereinabove named. I request that said distribution of income be made in quarterly payments.

The Trust for my daughter, Eleanor D. Lyon, shall continue for and during her natural life, however, during her life should the income from her share in said Trust Estate not be sufficient for her proper maintenance and support, then the Trustee in his discretion is authorized to allow her to withdraw from the corpus such sums as may be necessary from time to time for her personal and individual comfort, maintenance and support. Whatever is left in the corpus of said estate belonging to Eleanor D. Lyon at the time of her death, shall be equally divided between Helen Dick, Helen A. Dick and George F. Dick, III. and by the Trustee paid over to them.

At the death of my daughter, Eleanor D. Lyon, I desire the Trusts herein established for my three daughters shall cease and determine, and I authorize the Trustee herein to pay and turn over to my daughter, Helen Dick, her one-third interest in said Trust, less any withdrawals of principal made by her, and also to pay to Helen A. Dick, her one-third interest in said Trust, less any withdrawals of

> principal made by her. The Trustee is further authorized to distribute whatever remains in the corpus of the Trust established for my daughter, Eleanor D. Lyon, equally between my daughters, Helen Dick and Helen A. Dick and my son, George F. Dick, III. In the event that the income from the Trust Estate going to Helen Dick and Helen A. Dick should not be sufficient for the proper maintenance and support of either of them, then the Trustee in his discretion is authorized to allow either one or both of them to withdraw from the corpus of their Trusts such sum as may be necessary from time to time for her or their personal and individual comfort, maintenance and support.
>
> * * * *
>
> No interest under this Will shall be transferable or assignable by any beneficiary (except by the Wills of Helen Dick and Helen A. Dick as provided above) or subject to the claims of their creditors, and all income distributions shall be paid to each beneficiary in person and not on any written order or assignment from any beneficiary.

5. Plaintiff understand that the following questions may not arise, but nonetheless asks the court's guidance to avoid a possible multiplicity of suits. While the will plainly states that the trusts shall all terminate and be distributed at the death of Eleanor D. Lyon, it is not clear what disposition the successor trustee should make of income or principal in the event either Helen M. Dick, Helen A. Dick or George F. Dick III, or any or all of them, pre-decease Eleanor D. Lyon. While the will of George F. Dick, Jr. contains the language "No interest under this will shall be transferable or assignable by any beneficiary (except by the Wills of Helen M. Dick and Helen A. Dick as provided above)," there is no

previous provision so providing.

WHEREFORE, plaintiff prays that the Court construe the will of George F. Dick, Jr. and advise plaintiff successor trustee as to its duties as regards the proper disposition of both the income and corpus of said trusts in the event Helen Dick, Helen A. Dick, George F. Dick III, or any or all of them, should predecease said Eleanor D. Lyon.

PEOPLES BANK OF BLOOMINGTON
Successor Trustee of the trusts created by the will of George F. Dick, Jr., deceased and as Trustee of the trusts created by the will of Althea M. Dick, deceased, Plaintiff

By SAMUELS, MILLER, SCHROEDER, JACKSON & SLY

By WILLIAM M. RICE
WILLIAM M. RICE

THOMAS S. SLY
WILLIAM M. RICE
JOHN E. FICK
SAMUELS, MILLER, SCHROEDER,
JACKSON & SLY
Attorneys for Plaintiff
406 Citizens Building
Decatur, Illinois - 62525
Telephone: (217) 429-4325

I, GEORGE F. DICK, JR., of Bloomington, McLean County, Illinois, do make, publish and declare this to be my Last Will and Testament, hereby revoking all other Wills by me heretofore made.

It is my wish that the Executors hereinafter named shall pay my funeral expenses and debts, including Federal Estate and State Inheritance Taxes.

Whatever automobile I may own at the time of my death, I give to my wife, Althea M. Dick.

I hereby give a life estate in all of my property to my wife, Althea M. Dick, she to have the full possession and sole management thereof as long as she shall live.

I also empower my wife, Althea M. Dick, to have authority to sell, transfer and convey any of the assets in my estate during her lifetime which she may think is for the best interest of my estate and I waive the requirements of furnishing bond by her in said sales and the purchaser is not required to see to the proper application of the purchase money.

After the death of my wife, Althea M. Dick, the remaining Executor of this Will shall transfer and assign to my son, George F. Dick, III, Eighty (80) Shares of the Capital Stock of the Peoples Bank of Bloomington as and for his individual property.

All the rest and residue of my estate remaining shall pass to my son, George F. Dick, III, as Trustee, for the benefit of my children, Helen Dick, Eleanor Dick Lyon, and Helen A. Dick, under the terms and conditions hereinafter set forth.

Said Trustee shall manage and care for the property that comes into his possession in the same manner that any prudent man would manage and care for his property; shall rent the land; look after the fertility thereof; insure the buildings for their insurable value; and do any and all things that any prudent owner would do in the management of his own land and property.

EXHIBIT "A"

I own an undivided two-thirds (2/3) interest in a farm in West Township, McLean County, Illinois, my brother's Estate owning the remaining one-third (1/3) interest thereof. It is my desire that this farm is retained, if possible, however, I realize that the Carl R. Dick Estate may at some future time desire its interest sold. In such case, the Trustee herein is fully authorized to join in the sale of said farm so that the farm may be sold as a whole; he is fully authorized and empowered to make any contract necessary, and also to make deed or deeds conveying my interest herein as fully as I might do if living. My Trustee is also fully empowered to purchase my brother's one-third interest if he feels it is for the best interest of my estate so to do. In connection with the sale of real estate made by the Trustee herein, I waive bond required by statute, and no purchaser shall see to the proper application of the purchase price. If it should at any time during the life of the trust herein created be the desire of the Trustees of the Carl R. Dick Estate and the desire of George F. Dick, III, Trustee, to partition said farm lands in kind, then George F. Dick, III, Trustee, in his discretion may agree to a partition, division or exchange or a sale and convert such undivided interest into an interest in severalty, or in cash, and to that end the said George F. Dick, III, Trustee, is fully authorized to make all necessary contracts, and as such Trustee to execute all necessary deeds of partition and accept all conveyances which may be necessary or appropriate to accomplish such partition.

Said Trustee is fully authorized and directed to hold as an investment in said Trust Estate the Capital Stock of the Peoples Bank of Bloomington, which shall be a part of my Trust Estate. If it becomes necessary at any time to sell and dispose of said Stock due to the fact that any of my children find it necessary to go into the corpus of said Estate, then in that case the Trustee is empowered to sell and dispose of it. Said Trustee is also authorized to dispose of any other property in said Trust if he thinks it is for the best interest of said estate.

I desire my son, George F. Dick, III, to vote any and all Capital Stock of the Peoples Bank of Bloomington in said Trust during the life of said Trust.

The income from said Trust Estate shall be divided into three equal parts and one part paid to each of my three daughters hereinabove named. I request that said distribution of income be made in quarterly payments.

The Trust for my daughter, Eleanor D. Lyon, shall continue for and during her natural life, however, during her life should the income from her share in said Trust Estate not be sufficient for her proper maintenance and support, then the Trustee in his discretion is authorized to allow her to withdraw from the corpus such sums as may be necessary from time to time for her personal and individual comfort, maintenance and support. Whatever is left in the corpus of said estate belonging to Eleanor D. Lyon at the time of her death, shall be equally divided between Helen Dick, Helen A. Dick and George F. Dick, III, and by the Trustee paid over to them.

At the death of my daughter, Eleanor D. Lyon, I desire the Trusts herein established for my three daughters shall cease and determine, and I authorize the Trustee herein to pay and turn over to my daughter, Helen Dick, her one-third interest in said Trust, less any withdrawals of principal made by her, and also to pay to Helen A. Dick, her one-third interest in said Trust, less any withdrawals of principal made by her. The Trustee is further authorized to distribute whatever remains in the corpus of the Trust established for my daughter, Eleanor D. Lyon, equally between my daughters, Helen Dick and Helen A. Dick, and my son, George F. Dick, III. In the event that the income from the Trust Estate going to Helen Dick and Helen A. Dick should not be sufficient for the proper maintenance and support of either of them, then the Trustee in his discretion is authorized to allow either one or both of them to withdraw from the corpus of their Trusts such sum as may be necessary from time to time for her or their personal and individual comfort, main-

tenance and support.

The Trustee shall keep a record of any withdrawals of principal made by any of my daughters during the life of the Trusts herein established and shall make distribution of the income from said Trusts, taking into account the withdrawals from said individual trusts on account of any withdrawals of corpus made individually by any of my daughters.

No interest under this Will shall be transferable or assignable by any beneficiary (except by the Wills of Helen Dick and Helen A. Dick as provided above) or subject to the claims of their creditors, and all income distributions shall be paid to each beneficiary in person and not on any written order or assignment from any beneficiary.

The Trustee shall be entitled to reasonable compensation for his services.

My wife, Althea M. Dick, in her Will has established a Trust similar to the one I have established here and I authorize the Trustee in each of said Wills to consolidate the Trust in my Will and my wife's Will and to operate it as one Trust Estate.

I nominate and appoint my wife, Althea M. Dick, and my son, George F. Dick, III, to be the Executors of this my Last Will and Testament and request the Court to allow them to qualify as such without furnishing bond as required by statute.

I also nominate and appoint my son, George F. Dick, III, to be Trustee under this Will and request that he not be required to furnish bond, and in the event my son, George F. Dick, III, should not act as Trustee, or for any reason should cease to act as Trustee, then the Peoples Bank of Bloomington, Bloomington, Illinois, is appointed Trustee under this Will with all the powers and authority given to my son, George F. Dick, III.

Dated at Bloomington, Illinois, this 14th day of July, A.D. 1953.

GEORGE F. DICK JR (Seal)

The foregoing instrument was on the date thereof signed, sealed, published and declared by the said testator, George F. Dick, Jr., as and for his Last Will and Testament in our presence, who at his request and in his presence and in the presence of each other have subscribed our names hereto as witnesses, believing him to be of sound mind and memory at this time said Will was executed.

HELEN J. FIGG of Bloomington, Illinois.

FRANK R. FIGG of Bloomington, Illinois.

LAST WILL AND TESTAMENT
OF
ALTHEA M. DICK

I, ALTHEA M. DICK, of the City of Bloomington, County of McLean, State of Illinois, being of sound and disposing mind and memory, do hereby declare this to be my Last Will and Testament, hereby revoking all former Wills by me heretofore made.

FIRST: I direct my Executor or Successor Executor, hereinafter named, to pay all of my just debts and funeral expenses from the assets of my Estate, as soon after my decease as is practicable and consistent with the best interests of my Estate; I further direct my said Executor or Successor Executor to pay from the assets of my Estate all Federal estate, inheritance, succession and income taxes that may be levied against my Estate and against the shares being transferred herein so that the same will pass to the legatees, devisees and beneficiaries herein free and clear of such taxes and without obligation upon their part to pay the same.

SECOND: I give and bequeath to my daughter, HELEN DICK, the following described items, having previously given to my said daughter all the furnishings in my residence and other personal belongings:

a) All my silverware, jewelry and personal effects.

b) Any automobile that I may own at the time of my decease.

THIRD: I direct my Executor, hereinafter named, to sell at either private or public sale, upon such terms as my Executor may determine, and at such time that my said Executor may determine in his sole discretion, my residence property at 116 South Mercer Avenue, Bloomington, Illinois. In reference to the sale of my said property by my Executor, his determination in reference to the sale of the same, to include the terms, time and provisions of sale, shall

not be questioned. I further authorize my said Executor to execute such deed or deeds as may be necessary in order to transfer the title of the property sold to the purchaser thereof. I direct that my said Executor pay the net proceeds of the sale of my residence property, after all expenses of sale, to my daughter, HELEN DICK, in fee simple absolute.

FOURTH: I authorize my Executor hereinafter named to sell any all of my property, unless stated in this, my Last Will and Testament, to the contrary, at private or public sale, in the sole discretion of my Executor, in order to make division of my property, to pay the items provided for in Paragraph FIRST above, and to properly administer my Estate. I further authorize my said Executor to execute such deed, deeds or bills of sale as may be necessary in order to transfer the title of the property sold to the purchaser or purchasers thereof.

FIFTH: I direct my Executor to divide all the rest, remainder and residue of my estate into three (3) equal portions or shares. Said division may be made in cash or in kind, with the selection and the division to be in the sole discretion of my Executor. I give, devise and bequeath one of said shares to my daughter, HELEN DICK, in fee simple absolute.

SIXTH: I give, bequeath and devise one of the three equal shares mentioned in the preceding paragraph to The Peoples Bank of Bloomington, Illinois, as Trustee, upon the following trusts and uses:

a) The Trustee is authorized to retain any investments that I may own upon my decease, including the stock of Peoples Bank of Bloomington, Illinois, without incurring liability upon its part.

b) The corpus of the Trust shall be invested and reinvested in the discretion of my Trustee and the net income therefrom, after payment of all necessary expenses of administration of the Trust, shall be paid at least quarterly to my daughter, Eleanor Dick Lyon. In the event that the income from the trust is insufficient for the proper care,

maintenance, support, medical expenses and hospital expenses of my said daughter, Eleanor Dick Lyon, in the sole discretion of my Trustee, taking into consideration her income from all other sources, the said Trustee is authorized to invade the corpus of the trust for the payment of the care, maintenance, support, medical expenses and hospital expenses of my said daughter.

c) No interest or income under this Trust shall be assignable by any beneficiary or be subject to the claims of his or her creditors, including claims for alimony or separate maintenance.

d) Upon the decease of my daughter, ELEANOR DICK LYON, this Trust shall terminate and the corpus thereof, together with any accrued income, shall be paid to my daughter, HELEN DICK, if she is then living, and if she is not then living, then the Trustee shall pay said corpus and accrued income to my son, GEORGE F. DICK, III, or shall be distributed to or for the benefit of such persons or organizations, including my said son's estate, in such proportions and subject to such trusts and conditions as my said son directs by his Will specifically referring to this power to appoint, in the event that he is not living at the termination of said Trust.

SEVENTH: I give, bequeath and devise the third of the three shares described in the second preceding paragraph, of the said rest, remainder and residue of my estate, to the Peoples Bank of Bloomington, as Trustee, upon the following trusts and uses:

a) That the said Trustee is authorized to retain any investments that I may own upon my decease, including the stock of the Peoples Bank of Bloomington, Illinois, without incurring liability upon its part.

b) That the Trustee shall invest and reinvest the corpus of the Trust, and after the payment of all necessary expenses of administering said Trust, shall pay the net income to my daughter, HELEN A. DICK YEAGER, at least quarterly. In the event the income from said Trust is, in the opinion of the

Trustee, taking into consideration the income of my said daughter, HELEN A. DICK YEAGER, from other sources, insufficient for her proper care, maintenance, support, medical expenses and hospital expenses, the Trustee in its sole discretion, may invade the corpus of the Trust for the payment of said care, maintenance, support, medical expenses and hospital expenses. My said daughter, HELEN A. DICK YEAGER, has several children, and my Trustee is instructed to consider their needs for care, maintenance, support and education in determining the needs of my daughter, HELEN A. DICK YEAGER.

c) No interest under this Trust shall be assignable by any beneficiary or be subject to the claims of his or her creditors, including claims for alimony or separate maintenance.

d) That upon the death of my daughter, HELEN A. DICK YEAGER, this Trust shall continue for the benefit of her children, until the youngest child of my said daughter has attained the age of 25 years and at said time this Trust shall terminate, and the corpus thereof, together with accrued income, shall be distributed to the children of HELEN A. DICK YEAGER in equal portions, share and share alike, provided further that if any of said children of HELEN A. DICK YEAGER have predeceased said termination date leaving issue surviving, the share of said deceased child shall be distributed to the child's issue per stirpes and not per capita. During the continuation of the Trust until the youngest child of the said HELEN A. DICK YEAGER has reached the age of 25 years, my Trustee shall pay the net income of the Trust to said children at least quarterly, in equal portions, share and share alike. My Trustee is further authorized to invade the corpus of the Trust for the care, maintenance, support, education, medical and hospital expenses of the said children of HELEN A. DICK YEAGER, in the sole discretion of my said Trustee, taking into consideration their income from all other sources.

EIGHTH: That my said Trustee, in reference to both of

the above created trusts, is authorized and empowered to manage, care for, invest and reinvest, improve, protect, control, mortgage, pledge, sell for cash or on credit at public or private sale, partition, exchange or otherwise deal with the trust properties, or any part thereof, in its discretion, in any and every way in which any owner having unrestricted ownership and control thereof could manage, care for, invest and reinvest, improve, protect, control, mortgage, pledge, sell, partition, exchange or otherwise deal with the same. In connection with the sale of said trust property to carry out the provisions of this Trust, said Trustee's decision as to the time and method of sale of said property shall not be questioned. The Trustee shall have power to vote any stock or other voting securities held hereunder; to issue proxies to vote the same to any person or persons; and to exercise or sell any subscription rights. In connection with the sale of real estate or any interest therein, said Trustee shall, at its discretion, sell said property at public or private sale, and upon such terms as seem most advisable to said Trustee, and said Trustee is given full power to make, execute and deliver all necessary instruments to pass title to the purchaser or purchasers thereof so that they will be vested with full and complete title to said property and same as I might do if living. The Trustee shall further pay all taxes or lawful assessments which may be levied against any of the Trust property. Said Trustee may incur and shall pay any necessary expenses in connection with the proper administration of said Trust, which, together with its own reasonable compensation, shall be charged against either the income or the principal of said Trust, or both.

NINTH: That in reference to above created Trust for the benefit of my daughter, HELEN A. DICK YEAGER, I direct that notwithstanding any provision contained in this, my Last Will and Testament, pertaining to said Trust, at the end of 21 years after the death of my daughter HELEN A. DICK YEAGER, the Trustee shall distribute the corpus of

the Trust, together with accrued income, to her children then living and to the issue of any deceased child, as is provided in said Trust, unless distribution was made sooner under the provisions of Paragraph SEVENTH (d).

LASTLY: I nominate, constitute and appoint my son, GEORGE F. DICK, III, as Executor of this, my Last Will and Testament, to act in said capacity without bond. In the event that my said son, GEORGE F. DICK, III, predeceases me or fails to qualify as Executor for any reason whatsoever, then I nominate, constitute and appoint the Peoples Bank of Bloomington, Illinois, as Successor Executor of this, my last Will and Testament. I further appoint the said Peoples Bank of Bloomington, Illinois, as Trustee of the above created Trusts.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of January, A. D., 1969.

ALTHEA M. DICK (SEAL)

The foregoing instrument was at the date thereof, signed, sealed, published and declared by ALTHEA M. DICK, as and for her Last Will and Testament, in the presence of us, who at her request, in her presence, and in the presence of each other have subscribed our names as witnesses thereto believing the said ALTHEA M. DICK to be of sound mind and memory, free from all restraint and from all undue influence at the time she and we so subscribed our names as Testatrix and as witnesses as aforesaid.

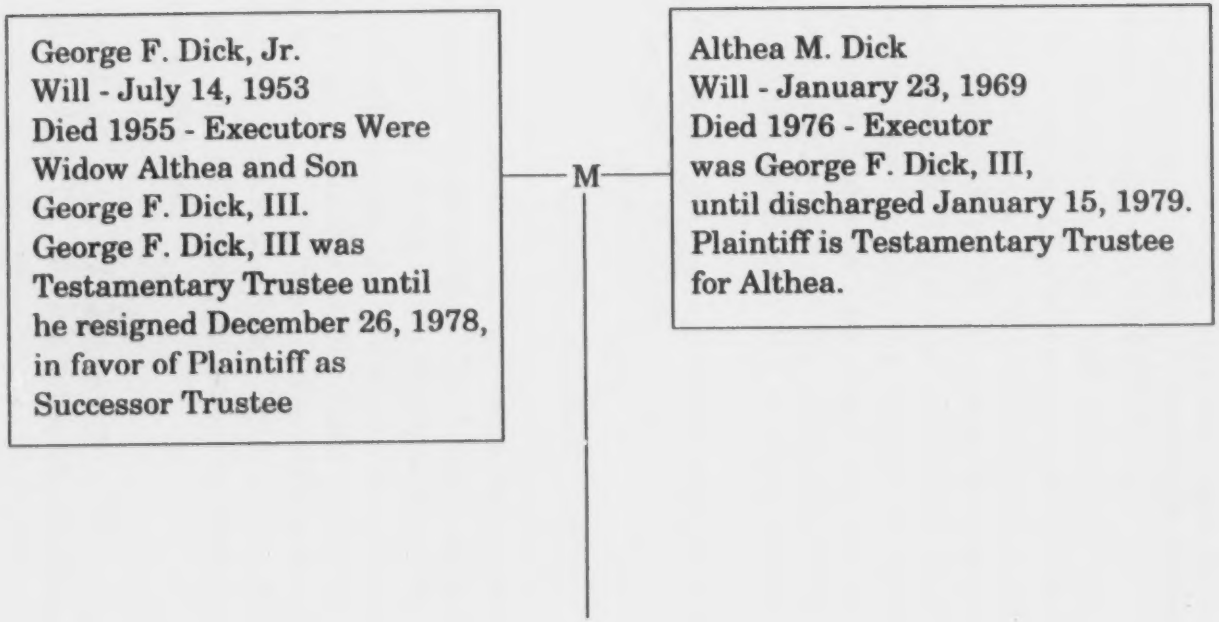
MAUD R. SHINALL of Bloomington, Ill.
HAROLD L. SHINALL, M.D. of Bloomington, Illinois
_____ of _____

EXHIBIT "C"

(over)

EXHIBIT "C"

DICK FAMILY RELATIONSHIPS



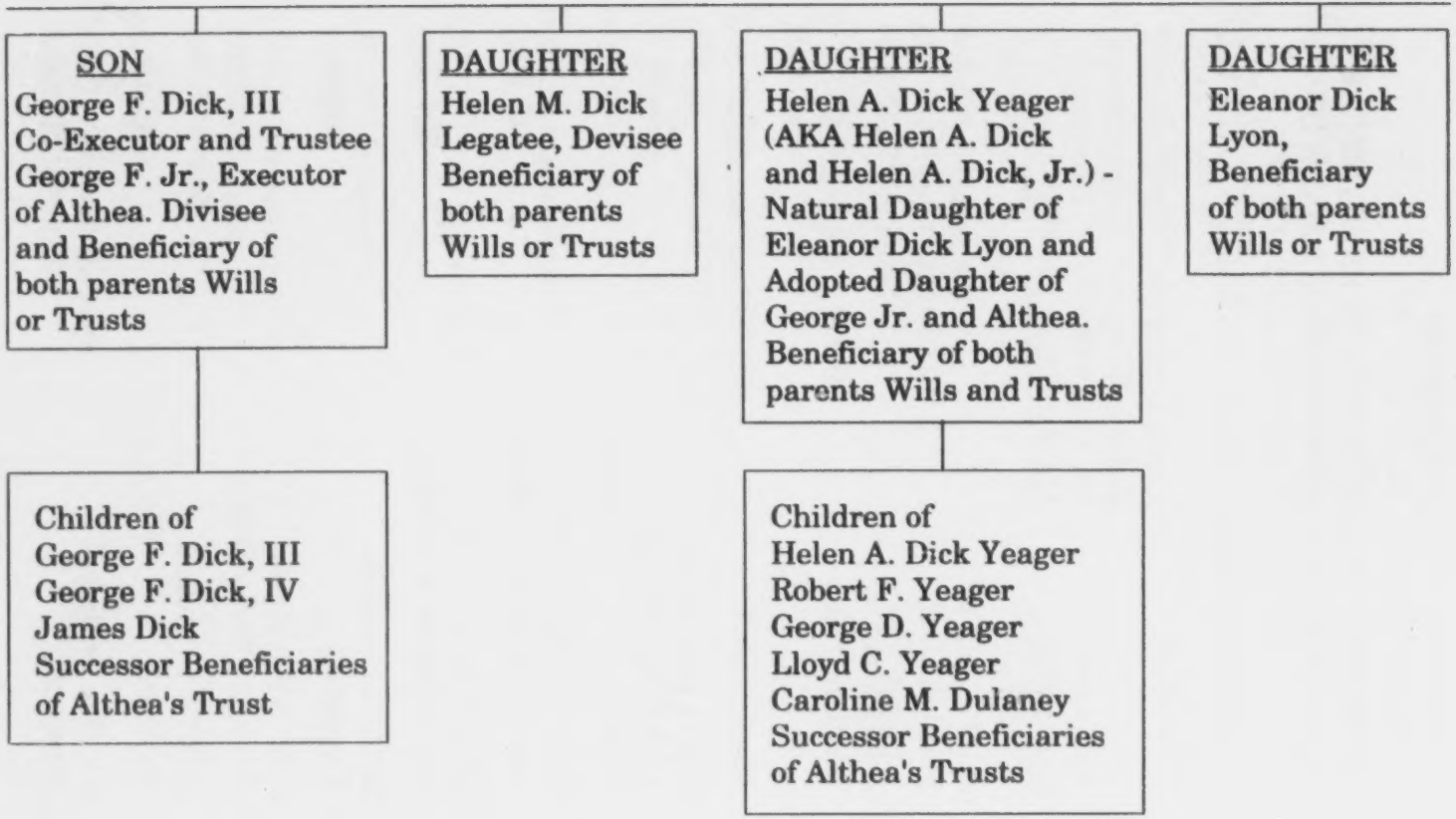

SON
George F. Dick, III
Co-Executor and Trustee
George F. Jr., Executor
of Althea. Divisee
and Beneficiary of
both parents Wills
or Trusts
DAUGHTER
Helen M. Dick
Legatee, Devisee
Beneficiary of
both parents
Wills or Trusts
DAUGHTER
Helen A. Dick Yeager
(AKA Helen A. Dick
and Helen A. Dick, Jr.) -
Natural Daughter of
Eleanor Dick Lyon and
Adopted Daughter of
George Jr. and Althea.
Beneficiary of both
parents Wills and Trusts
DAUGHTER
Eleanor Dick
Lyon,
Beneficiary
of both parents
Wills or Trusts
Children of
George F. Dick, III
George F. Dick, IV
James Dick
Successor Beneficiaries
of Althea's Trust
Children of
Helen A. Dick Yeager
Robert F. Yeager
George D. Yeager
Lloyd C. Yeager
Caroline M. Dulaney
Successor Beneficiaries
of Althea's Trusts

Exhibit "D"

SUMMARY OF LOANS BY AND REPAYMENTS TO
GEORGE F. DICK, JR. TRUST MADE BY
GEORGE F. DICK III, AS TRUSTEE
TAKEN FROM RECORDS OF GEORGE F. DICK III

Dates and Transaction	Loans to George F. Dick III or his then wife, Marilyn Dick	Payments of Principal or Interest on Loans
6/11/71 Loan to Marilyn Dick	$ 10,000	
6/17/71 Loan to Marilyn Dick	20,000	
7/1/71 Loan to Marilyn Dick	49,000	
7/19/71 Interest on 1st 2 loans through 6/30/71		$ 62.50
12/20/71 Interest for one month on $79,000		329.20
12/20/71 Interest for one month on $79,000		329.20
12/20/71 Principal Payment		100.00
4/19/72 Principal Payment from Marilyn		800.00
4/19/72 Principal Payment		700.00
5/17/72 Principal Payment		20,000.00

Dates and Transaction	Loans to George F. Dick III or his then wife, Marilyn Dick	Payments of Principal or Interest on Loans
5/17/82 Interest to 7/1/72 - almost 9 mos. on $57,400		2,148.27
6/30/72 Loan	2,000	
7/20/72 Principal Payment		50.00
10/20/72 Interest on $59,350 from 7/1/72 to 10/31/72 (4 mos.)		741.87
11/28/72 Principal Payment		100.00
5/28/73 Interest on $59,250 from 11/1/72 to 5/31/73		1,728.16
5/29/73 Loan	2,000	
8/9/73 Loan to Marilyn Dick	3,000	
9/21/73 Loan to George F. Dick III	3,000	
11/10/73 Interest to 12/31/73		1,886.47
2/22/74 Interest on $67,250 for January and February		560.42
6/5/74 Loan	2,000	
6/18/74 Interest through 6/30/74 on $69,250		1.127.83

Dates and Transaction	Loans to George F. Dick III or his then wife, Marilyn Dick	Payments of Principal or Interest on Loans
1/6/75 Interest through 12/31/74		1,731.25
1/4/75 Loan to George F. Dick III	12,000	
11/17/75 Apply to Interest		1,500.00
12/8/75 Interest Balance through 12/31/75		2,537.50
6/2/76 Interest through 6/30/76		2,031.25
6/29/76 Loan to George F. Dick III	3,000	
9/15/76 Paid Principal		2,250.00
11/4/76 Loan to George F. Dick III	1,000	
11/26/76 Loan to George F. Dick III	1,000	
12/22/76 Interest Payment		1,000.00
12/31/76 Interest through 12/31/76 6% as of 11/1/76		1,214.98
4/20/77 Interest for 1st quarter at 6%		1,260.00
6/30/77 Interest for 2nd quarter at 6%		1.260.00

Dates and Transaction	Loans to George F. Dick III or his then wife, Marilyn Dick	Payments of Principal or Interest on Loans
9/20/77 Loan to George F. Dick III	4,900	
10/7/77 Interest through 9/30/77		1,268.05
1/4/78 Interest through 12/31/77		1,333.50
3/27/78 Interest through 3/31/78		1,333.50
6/19/78 Principal and Interest paid		88,900.00
6/19/78 Principal and Interest paid		1,169.10

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, HELEN M. DICK, ELEANOR DICK LYON, HELEN A. DICK YEAGER, a/k/a HELEN A. DICK and HELEN A. DICK, JR., LLOYD R. YEAGER JR., CAROLINE M. DULANEY, ROBERT F. YEAGER, GEORGE D. YEAGER, JAMES DICK and GEORGE F. DICK IV, Defendants.	)	

CONSTRUCTION OF TESTAMENTARY TRUSTS
AMENDED COUNT IV

Plaintiff, PEOPLES BANK OF BLOOMINGTON, by Samuels, Miller, Schroeder, Jackson & Sly, its attorneys, leave of Court having been first obtained, files its Amended Count IV herein, complaining of defendant, GEORGE F. DICK III, alleging:

1-5. Plaintiff realleges paragraphs 1 through 5 of Count I as paragraphs 1 through 5 of this Count IV.

6-7. Plaintiff realleges paragraphs 7 and 8 of Count I as paragraphs 6 and 7 of this Count IV.

8. Immediately prior to June 27, 1977, defendant, George F. Dick III, was acting as executor of the estate of Althea M. Dick, and there was in the corpus of that estate 830 shares of stock of the Peoples Mid-America [sic] Corporation, the principal business of which was at all material times the operation of the Peoples Bank of Bloomington, and, at all material times, George F. Dick III was an officer and director of Peoples Mid-Illinois Corporation, as well as an officer, director and chief executive officer of the Peoples Bank of Bloomington, and as such officer and director knew that a directors meeting would be held within a week of June 27, 1977, at which time the value of the stock of Peoples Mid-Illinois Corporation would be re-evaluated and increased.

9. Despite his aforesaid knowledge, George F. Dick III procured the purchase of 500 of said 830 shares of stock owned by the estate of Althea M. Dick by Peoples Mid-Illinois Corporation, for a per share price of $90.00. Within about one week of June 27, 1977 said directors, including defendant, increased the per share value of said company to be paid by it for its own shares to $105.00 per share.

10. The said sale of 500 shares of stock was not necessary in administration of said estate and violated the duty of George F. Dick III to manage the assets of the estate of Althea M. Dick in a prudent manner, and resulted in an immediate loss to the estate of Althea M. Dick of at least $7,500.00. This loss was not inventoried or made a part of any final account subsequently prepared by George F. Dick III or furnished to any parties interested in said estate, including this plaintiff.

11. The reasonable value of said stock on June 27, 1977 was $105.00 per share, but despite his knowledge aforesaid, George F. Dick III sold said stock for $90.00 per share, causing a loss to the estate of Althea M. Dick, and to the trusts of which plaintiff is trustee of at least $7,500.00.

12. On June 27, 1977 defendant reasonably knew a stock split of said shares would occur in the next few months which would further increase the value of said estate's

shares.

13. On February 20, 1978 George F. Dick III presided at a meeting of the board of directors of Peoples Mid-Illinois Corporation wherein a resolution was adopted proposing a 3 for 1 stock split in the common stock of Peoples Mid-Illinois Corporation, which said resolution was subsequently supported by George F. Dick III at a special meeting of shareholders of said corporation held April 17, 1978, when said stock split was adopted by a vote of the shareholders, including the ballot of George F. Dick III.

14. On account of the aforesaid improper sale of said 500 shares, the estate of Althea M. Dick was deprived of the profits created by said stock split of approximately $5.00 per share, said share being worth $37.00 after said split, for a loss of at least $3,000.00 to said estate.

WHEREFORE, plaintiff prays for judgment against defendant, GEORGE F. DICK III, as follows:

A. In the amount of $10,500.00 representing the loss of value on account of the sale of 500 shares from the estate of Althea M. Dick for less than their fair market value.

B. For an accounting of lost interest on account of the sale of George F. Dick aforesaid.

C. For an accounting of any additional losses suffered by the estate of Althea M. Dick as a result of said subsequent 3 for 1 stock split.

D. For such further and additional relief in the form of money damages as may to the Court be found to be just and proper, and reasonable attorney fees.

PEOPLES BANK OF
BLOOMINGTON,
Plaintiff

By SAMUELS, MILLER,
SCHROEDER, JACKSON
& SLY

By JOHN E. FICK
Its Attorneys

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, et al., Defendants.	)	

PETITION TO VACATE ORDER(S) OBTAINED
BY FRAUD UPON THE COURT

Petitioner Helen A. Dick, pro se, hereby states the following:

A.
IN GENERAL

1. Petitioner is a beneficiary of trusts created by the wills of George F. Dick, Jr., and Althea M. Dick.

2. The Peoples Bank (formerly Peoples Bank of Bloomington, hereinafter the Bank) is trustee of the trust f/b/o Helen A. Dick which was created by the 1969 will of Althea M. Dick. Until shortly after the January 12, 1992, death of Eleanor D. Lyon, the Bank was trustee of the trust created by the will of George F. Dick, Jr. The Bank had become trustee of said trusts on December 26, 1978, and December 20, 1978 (Receipt of Trustee filed in the Matter of the Estate of Althea M. Dick, McLean County Probate 76-P-554).

3. On March 14, 1984, an order of dismissal was entered in the above-entitled cause by the Honorable Richard M. Baner.

4. As set forth more fully hereinafter and in the supporting Affidavit of Helen A. Dick, said order of dismissal was entered by the Court through errors of fact which, if then known to the Court, would have prevented the Court from entering said order.

5. As the record shows, the Bank and George F. Dick III obtained the aforesaid order of dismissal on the morning scheduled for trial to begin (March 14, 1984) by presenting a signed stipulation to the Court in which said Bank and George III represented that all then-pending claims had been "fully compromised and settled" and that the cause should be dismissed as to them with prejudice.

6. The Bank did not reveal to the Court that Helen A. Dick had informed the Bank (through its attorneys) that the combined estates of George F. Dick, Jr. and Althea M. Dick were worth approximately half a million dollars (not including personal property such as household furnishings) when George Jr. died in May 1955 --- and that in May 1955, 80 shares of the Capital Stock of the Peoples Bank of Bloomington had a total value of $50,000 --- and that the reason George F. Dick III was not to receive an equal portion of said estates was that George Jr. had given George III a job at the Bank and enough shares (10) to qualify him as a director, but none of the three daughters were self-supporting or employed.

7. The Affidavit of George R. Morrison, President of the Bank after George F. Dick, Jr. resigned as the Bank's president a week before his death, is filed with the Illinois Inheritance Tax Return, George F. Dick, Jr., McLean County Number 6770 and shows that the Capital Stock of the Bank sold for $625 per share in 1954-1956.

8. The Bank did not reveal to the Court that one of its attorneys told Helen A. Dick in about mid-1983 that the Bank's action was a net worth case, based on George F. Dick III's having become a millionaire due to advantages he had

obtained while using property of the Estate of George F. Dick, Jr. for his (George III's) own benefit during the lifetime of George Jr.'s widow, Althea M. Dick.

9. The Bank did not reveal to the Court that another of its attorneys told Helen A. Dick in about mid-1983 that property worth half a million dollars in 1955 would, if properly managed, be worth about three million dollars by 1982-83.

10. The record shows that the exhibits marked as the Bank's exhibits during the pre-trial conference on February 22, 1984 (including but not limited to George F. Dick III's Financial Statements and copies of deeds to property in California, New Mexico and Colorado) were marked in preparation for the matter to be tried as a net worth case.

11. A copy of the settlement agreement between the Bank and George F. Dick III is attached hereto as Exhibit "A" and shows on its face that the Bank settled with George III for a total of $120,000, $60,000 of which was to be applied to the trust established by the Will of George F. Dick, Jr.

12. Said agreement/contract (Exhibit "A" attached hereinabove) also shows on its face that when signing same, the Bank's then-president, Jerry Gummere, represented that the Bank and its officers were "duly authorized to execute this agreement and fulfill its terms."

13. The Bank did not bring attention to the fact that neither the 1953 will of George F. Dick, Jr. nor the 1969 will of Althea M. Dick (copies of which are attached hereto, respectively, as Exhibits "B" and "C") contain any term or provision authorizing the settlement, compromise or abandonment of claims.

14. The Bank did not reveal that there was and is no such statutory authority applicable to said wills, both of which were executed prior to October 1, 1973 (760 ILCS 5/3 et seq., formerly Ill.Rev.Stat. ch. 17, sec. 1653 et seq.).

15. The Bank did not reveal that any such agreement/contract was void because both parties (the Bank and George F. Dick III, who was an attorney and who had been executor

of both wills) knew that settlement, compromise or abandonment of claims was not authorized by will or by statute and/or was void because both parties had entered said agreement/contract for purposes of defrauding third parties, including but not limited to the Court and Helen A. Dick.

16. The Bank refused Judge Baner's offer to review the settlement agreement (Record Sheet entry of March 14, 1984), thus the Bank and George F. Dick III concealed its terms and provisions from the Court.

17. The Bank did not reveal to the Court that Helen A. Dick informed the Bank, through one of its attorneys, that she believed there was no way/procedure by which she could (attempt to) set aside that or any other agreement to which she was not a party.

18. The record shows that it was through no fault or negligence on the part of Helen A. Dick that the Bank and George F. Dick III obtained Judge Baner's entry of the aforesaid March 14, 1984, order of dismissal. The Bank's Counts V and VII had been dismissed (Record Sheet entry of January 18, 1983). The Bank had dismissed Helen A. Dick out of the main cause altogether when it voluntarily dismissed its Count VI (Record Sheet entry of February 15, 1984), which had been a count for discovery. On February 21, 1984, Judge Baner had entered an order finding that Helen A. Dick was not a party to any of the counts then remaining (Counts I, II, III and IV) and that she could not submit factual matters or present argument. Helen A. Dick voiced her objection to the Bank's dismissing its action but had no standing to prevent it (Record Sheet entry of March 14, 1984).

B.

AS TO THE TITLE OF THE PLEADING
FILED BY THE BANK

1. As the record shows, the pleading filed by the Bank was entitled "Construction of Testamentary Trusts."

2. Said title drew attention away from the fact that Counts I, II and V were counts for construction of the will of George F. Dick, Jr.

3. The Bank did not reveal that Helen A. Dick was a necessary and indispensable party to each count for will construction and/or that any finding against her interests would be moot as to her where she was not a party to such counts.

C.

AS TO PARAGRAPH 5 OF THE BANK'S COUNT I, WHICH WAS A PARAGRAPH COMMON TO ALL COUNTS OF THE PLEADING FILED BY THE BANK

1. In paragraph "5" of its Count I, the Bank pleaded that George F. Dick III "retired from the Bank in February of 1981." In truth and in fact, George III had always been and still was a director of the one-bank holding company (Peoples Mid-Illinois Corp., formed in 1971 while George III was president of the Bank and chairman of its board of directors) which owns the Bank and governs its affairs.

2. As set forth more fully hereinafter, the Bank (individually) and/or the holding company had actually participated in acts which formed the subject matter of the Bank's Counts I, II and IV ---- and the Bank had known at the time of the checks which were the subject matter of the Bank's Count III. The Bank thus knew all material facts as to these causes of action at or about the time it became trustee of these estates in December 1978.

3. The record shows that the Bank's pleading was filed September 22, 1982, and that the Bank did not file any action regarding these estates until after Helen A. Dick's August 14, 1982 letter (a copy of which is in the record at page C-134), sending copies to, among others, the individual directors of the Bank including its then president, Jerry Gummere, in which Helen A. Dick quoted as follows:

> "A trustee is liable to the beneficiary for breach of trust, if he --- knows or should know of a

> situation constituting a breach of trust committed by his predecessor and he improperly permits it to continue --- or neglects to take proper steps to compel the predecessor to deliver the trust property to him --- or neglects to take proper steps to redress a breach of trust committed by the predecessor." Restatement Trusts 2nd, sec. 223 et seq.

4. No issue was raised in the Bank's action as to whether a different trustee ought to have been appointed.

D.

AS TO PARAGRAPH 2 OF THE BANK'S COUNT I, WHICH WAS A PARAGRAPH COMMON TO ALL COUNTS OF THE PLEADING FILED BY THE BANK

1. In paragraph "2" of Count I, the Bank pleaded that Althea M. Dick and George F. Dick III "were named and served as executors of the will of George F. Dick, Jr. until the final report of the executors on or about July 5, 1956" --- and that George III "was named and served as trustee of the trusts created by the will of George F. Dick, Jr. until December 26, 1978, when he resigned."

2. By pleading thus, the Bank made it appear as though George III had been testamentary trustee during Althea's lifetime. The Bank thus drew attention away from the terms and provisions of the will of George F. Dick, Jr. which gave Althea "full possession and sole management" of all her late husband's property.

3. A copy of the will of George F. Dick, Jr. is attached hereto (as Exhibit "B") and shows on its face that no property was to be in trust during Althea's lifetime; that she had the right to sell any or all property and consume sales proceeds; and that the only trust created by said will could not be funded until after Althea's death and was f/b/o the three daughters.

E.

AS TO COUNT I OF THE PLEADING
FILED BY THE BANK

1. Said Count I was a count for construction of the will of George F. Dick, Jr. Helen A. Dick was not a party to said count.

2. By pleading (as set forth in the above section as to paragraph "2" of said Count I) as though George F. Dick III had been testamentary trustee during Althea M. Dick's lifetime --- and by pleading (at paragraph 7 of said Count I) that the 80 shares were transferred to George III in 1959 from a purported "trust" --- the Bank drew attention away from the provisions of the will of George F. Dick, Jr. (Exhibit "B" hereto) which gave Althea "full possession and sole management" with the power to sell any or all of her late husband's property and to consume sales proceeds:

> "I hereby give a life estate in all of my property to my wife, Althea M. Dick, she to have the full possession and sole management thereof as long as she shall live.
>
> I also empower my wife, Althea M. Dick, to have authority to sell, transfer and convey any of the assets in my estate during her lifetime which she may think is for the best interest of my estate and I waive the requirements of furnishing bond by her in said sales and the purchaser is not required to see to the proper application of the purchase money."

3. The Bank did not reveal to the Court that its counsel had told Helen A. Dick that because said will gave Althea the power to defeat any interest of George III's by selling property, he did not have a vested interest.

4. By pleading as it did regarding the 80 shares being transferred to George III in 1959 from a purported "trust," the Bank drew attention away from the aforesaid provisions of the will under which no property was in trust during the

lifetime of Althea M. Dick (who died October 10, 1976) and drew attention away from the provisions of said will which provided that George III could not acquire any actual interest until after Althea's death, at which time if there were any such specific property remaining in George Jr.'s estate, George III could acquire an interest in exactly "Eighty (80) Shares of the Capital Stock of the Peoples Bank of Bloomington," and transfer same to himself in his capacity as "the remaining Executor."

> "After the death of my wife, Althea M. Dick, the remaining Executor of this Will shall transfer and assign to my son, George F. Dick, III, Eighty (80) Shares of the Capital Stock of the Peoples Bank of Bloomington as and for his individual property."

5. By pleading as it did, the Bank drew attention away from the fact that only by going outside the four corners of the will of George F. Dick, Jr. (to learn that when George Jr. made his will, George III was a vice president and a director of the Bank and an attorney, thus that George Jr. avoided creating any conflict of interest during Althea's lifetime by giving George III every reason to work for his mother's interest in the highest possible income and every reason to work against stock dividends and/or splits or conversion of the Bank stock) is it possible to learn why George Jr. provided in his will that any interest of George III's would be diminished by any stock dividend and/or split and would be altogether defeated by a conversion of the Capital Stock of the Peoples Bank of Bloomington to the use and beneficial enjoyment of a holding company which, by its very nature, would accumulate profits as stock dividends and thus adversely affect the income of all stockholders, including George Jr.'s widow, Althea.

6. A copy of the Stock Holders Ledger page showing shares registered to "Althea M. Dick, Life Tenant Under Will of Geo. F. Dick, Jr., Deceased," and a copy of Stock Certificate

#634 are among the Exhibits marked by the Bank during the February 22, 1984, pre-trial conference. Said documents show that at all times after September 19, 1995, the Bank and (after its formation) the holding company (Peoples Mid-Illinois Corporation) had actual notice of the will of George F. Dick, Jr.

7. Actual notice of a will gives a corporation, when asked to transfer shares, the duty to inquire into the will and to refuse to effect any transfer --- and any subsequent transfer, payment and/or delivery of shares --- that is violative of the will's provisions.

8. Minutes and George F. Dick III's "RESOLUTION TO BE ADOPTED BY BOARD" are among the documents marked as the Bank's Exhibits on February 22, 1984, and show that while George III was president of the Bank and chairman of its board in 1967, he personally proposed and recommended a 30 for 1 stock dividend and split to his fellow directors on June 12, 1967, and to the stockholders at a Special Stockholders Meeting on July 24, 1967. Other Minutes marked as the Bank's Exhibits during the aforesaid pre-trial conference show that George III was chairman of the holding company's board of directors at the time of what was a 1978 stock dividend (i.e. accompanied by a 200% increase to the Capital Stock Account).

9. Stock Holders Ledger pages marked as the Bank's exhibits bear the words, "PBB SHARES CONVERTED TO PEOPLES MID-ILLINOIS CORP" as of "6-30-72" and/or "7-3-72."

10. By pleading the aforesaid 1967 stock dividend and split and the aforesaid 1978 stock dividend as though they had been arms' length "splits" and by pleading the aforesaid 1972 conversion as a 1 for 1 "exchange," the Bank concealed the aforesaid material facts.

11. As the record shows, Helen A. Dick obtained documents of George F. Dick III's McLean County Bank credit file and his admissions as to same. Said credit file (which is among the Exhibits marked by the Bank) shows that begin-

ning in or about June 1959 and continuing until February 13, 1981, George III pledged all shares in question to obtain loans to himself from the McLean County Bank, the highest outstanding balance having been $86,400 on May 15, 1978.

12. The record shows that Helen A. Dick obtained certified documents, and George III's admissions as to same, showing that during the period of said McLean County Bank loans, George III purchased two parcels of real property in Colorado. One was purchased on November 3, 1963 for $1,500 and sold (to the U.S.A.) on September 22, 1975 for $27,500. The other was purchased on October 1, 1962 for $61,599.99 in various parcels, 7 parcels having been sold for a total of $72,750 prior to George III's divorce from his former wife Marilyn and the last (7th) parcel having been given to Marilyn as part of their property settlement agreement (Dick v. Dick, McLean County 76-D-406) and sold by her to the U.S.A. for $214,000 on October 4, 1977.

13. Exhibits marked by the Bank during the February 22, 1984, pre-trial conference included a copy of the document showing the $61,599.99 purchase of Colorado property but did not include any document as to the other ($1,500) property and did not include any document pertaining to the aforesaid sales.

14. By pleading Count I as it did and/or by failing to mark as exhibits all documents pertaining to the Colorado real estate investments --- the Bank was concealing the aforesaid facts as to great advantages George III obtained due to and/or subsequent to the 1959 transfer of 80 shares, including but not limited to the advantages he obtained by investing in Colorado real property while he was pledging such shares as collateral to the McLean County Bank.

15. Exhibits marked by the Bank during the aforesaid pre-trial conference show that the Bank did not use and/or mark the correct first page of the June 12, 1967 Minutes of the Board of Directors of the Peoples Bank of Bloomington.

16. Stock Holders Ledger pages marked as the Bank's exhibits show that subsequent to the 1959 transfer, the

Bank (in 1967) and the holding company (in 1972 and 1978) had paid, transferred and/or delivered to George F. Dick III all shares resulting from and/or on account of said 1959 transfer --- and that the holding company (Peoples Mid-Illinois Corp.) had effected 1980 and 1981 sales of some of the shares in question (the 1981 sale having been to one of George III's fellow holding company directors) and that said holding company had also effected the transfer of some of the shares in question to George III's second wife in 1981 --- all despite having had the aforesaid actual notice of the will of George F. Dick, Jr., ever since September 19, 1955.

17. The Bank never revealed to the Court that, subsequent to argument as to partial summary judgment, one of its attorneys represented to Helen A. Dick that the Bank had "lost" Count I.

18. The record shows that none of the counts remaining on March 2, 1984 were "lost." Judge Baner found that the 1959 transfer of 80 shares to George III was violative of the provisions of the will of George F. Dick, Jr.; ordered George F. Dick III to account for all shares for the entire period from the March 31, 1959 transfer to the October 10, 1976 death of Althea M. Dick; and reserved the right to rule on remaining issues (Order entered March 2, 1984).

19. At the time Judge Baner entered the aforesaid March 2, 1984 order, there were no facts or exhibits before the Court to show the foregoing material facts as to advantages George F. Dick III had obtained while in possession of the shares after the 1959 transfer --- and there were no facts or exhibits before the Court to show that Judge Baner's findings against the interests of George F. Dick III were also against the interests of the Bank (individually) and the holding company (Peoples Mid-Illinois Corp.), each of which had participated in the aforesaid transfers, payments and/or deliveries of shares despite having had actual notice of George F. Dick, Jr.'s will since September 1955.

F.

AS TO COUNT II OF THE PLEADING
FILED BY THE BANK

1. Said Count II was a count for construction of the will of George F. Dick, Jr. Helen A. Dick was not a party to said count.

2. As set forth in the foregoing section as to Count I of the Bank's pleading and as shown by Stock Holders Ledger pages marked as the Bank's exhibits during the February 22, 1984 pre-trial conference, from the time of its formation (in or about 1972), the holding company (Peoples Mid-Illinois Corporation) had actual notice of the will of George F. Dick, Jr.

3. In addition to realleging (at paragraphs 5 and 6 of the Bank's Count II) that the 80 shares had been transferred to George III in 1959 from a purported "trust" and pleading the 1967 payments and/or deliveries of additional shares as though they had been arms' length "splits" (when, as set forth above, they were not) and pleading the 1972 conversion as an "exchange" of shares — the Bank made numerous additional allegations in its Count II regarding the existence of a purported "trust" and "trust account", described George III as "trustee" at the time of the 1972 transaction; and alleged that the Bank was uncertain whether the transaction was "for a proper trust purpose."

4. Documents marked as the Bank's exhibits during the February 22, 1984 pre-trial conference include copies of Stock Holders Ledger pages showing that at all times material to the October 26, 1972 and November 30, 1972 transaction(s), Peoples Mid-Illinois Corporation had actual notice of the will of George F. Dick, Jr. and effected the transaction(s) which resulted in the 330 shares being registered to "George F. Dick, III Trustee U/W George F. Dick, Jr. Deceased," during the lifetime of Althea M. Dick (who died October 10, 1976).

5. By pleading Count II as it did and by praying for the

Court to determine, among other things, whether the transaction resulted in a loss "to any trust beneficiary," the Bank drew attention away from the terms and provisions of the will of George F. Dick, Jr., under which Althea M. Dick was given "full possession and sole management" of all her late husband's property for her entire lifetime.

6. By pleading as it did, the Bank concealed material facts regarding the holding company's having effected the transaction which resulted in holding company director George F. Dick III's acquiring possession and management of the 330 shares on November 30, 1972 in a purported capacity of "trustee."

G.

AS TO COUNT III OF THE PLEADING FILED BY THE BANK

1. Throughout its Count III, the Bank referred to the $112,900 in unsecured loans beginning in June 1971 (during the lifetime of Althea M. Dick, who died October 10, 1976) as having been made from "trust funds" held by George F. Dick III "as trustee under the will of George F. Dick, Jr."

2. Documents marked as the Bank's exhibits during the February 22, 1984 pre-trial conference include bank statements and other documents pertaining to accounts George III maintained with the Bank and entitled "GEO F DICK JR ESTATE" and bearing George III's name as "C/O GEO F DICK III" and/or "GEO F DICK III TRUSTEE."

3. Said exhibits show on their faces that the Bank had actual notice at the time that George F. Dick III was writing checks to himself and his then wife Marilyn from funds which were property of an estate.

4. None of the exhibits marked by the Bank indicate that the Bank ever made any attempt, prior to the filing of its September 22, 1982 pleading in this cause, to ascertain whether or not George III had authority to write checks to himself and his then wife Marilyn from funds which were property of said estate.

5. The Bank did not reveal facts as to investments George III was making in New Mexico, California, and Bloomington, Illinois property (the Illinois property having been town-houses, one unit of which George III used as a residence for his family) during the period of the loans in question. Documents as to such property are among the exhibits marked by the Bank on February 22, 1984.

H.
AS TO COUNT IV (AS AMENDED) OF THE BANK'S PLEADING

1. The Bank filed an amended Count IV on March 8, 1984.

2. The Bank pleaded sufficient facts to show, but did not allege, that the holding company's 1977 purchase of the 500 holding company shares was fraudulent per se because the Executor of Althea M. Dick's estate (George F. Dick III) was an officer and director of the holding company --- and his interests in obtaining the lowest possible purchase price for the holding company were necessarily in conflict with his duties as Executor to obtain the highest possible price for Althea's estate (of which his three sisters were the beneficiaries).

3. The Bank alleged only that George III's sale was improper and that Althea's estate had been damaged --- thus concealing that the holding company's purchase of holding company shares from said estate was improper and/or fraudulent per se and that the holding company had profited due to said 1977 purchase (and benefits subsequently paid therefrom in the form of the 1978 stock dividend set forth hereinabove as the Bank's Count I).

4. The Inheritance Tax Return filed in the Matter of the Estate of Althea M. Dick (McLean County 76-P-554) contains a June 6, 1977 letter to "Mr. Fred Dick, III, Executor of the Estate of Mrs. Althea M. Dick" from the then Vice President of Peoples Mid-Illinois and stating that just prior

to and just after October 10, 1976 (the date of Althea's death) Peoples Mid-Illinois Corporation stock was selling for $90 per share.

5. The Bank failed to plead that the holding company knew that the 500 shares were property of Althea's estate --- and that holding company director and officer George F. Dick III was Executor of said estate --- and that the $90 per share purchase on June 27, 1977 was neither an arms' length transaction nor for a proper purchase price.

6. The Bank failed to pray for said purchase to be set aside and for all benefits since June 27, 1977 to be delivered to the Bank as trustee of Althea's estate.

I.

AS TO THE BANK'S COUNT V

1. Helen A. Dick was a party to the Bank's Count V for construction of the will of George F. Dick, Jr. As the record shows, she was not at any time independently represented by an attorney during the Bank's action and she depended on the Bank to fully and fairly represent her interests.

2. The Bank took the evidence deposition (Notice of Evidence Deposition filed November 18, 1982) of the only witness then living to the 1953 mutual wills of George F. Dick, Jr. and Althea M. Dick. By the time the Bank's Count V was dismissed (Record Sheet entry of January 18, 1983) the Bank did (contrary to allegations made in its Count V) have knowledge of the existence of Althea's 1950's will in addition to the terms and provisions of the will of Attorney George F. Dick, Jr., which referred to the will Althea had made.

3. The Bank took a deposition from Attorney Albert Hoopes and thus knew that in 1969 George III had asked Mr. Hoopes to prepare a will for Althea; that George III instructed said Hoopes as to the provisions of same; and that said Hoopes delivered the unsigned will to George III and never saw or heard of it again until after the Bank filed its

action in 1982.

4. The Bank failed to ask the Court whether Althea had a right to revoke her mutual will after she had taken full possession and sole management of all of her husband's property, instead of that portion to which she would have been entitled had he died intestate.

5. The Bank failed to ask the Court whether George III, as Co-Executor of the will of George F. Dick, Jr., had a right to obtain a different will from Althea under which he (and his oldest sister, Helen Dick) was to receive greater benefits than he could have received under Althea's mutual will.

J.

AS TO PERTINENT EVENTS SINCE GEORGE F. DICK III AND THE BANK OBTAINED THE MARCH 14, 1984 ORDER OF DISMISSAL

1. In or about 1985, the holding company (Peoples Mid-Illinois Corporation) purchased an additional bank (First National Bank of Normal) with funds derived from the operation of the Peoples Bank of Bloomington. The two banks were merged and have since been operated as one state bank (The Peoples Bank) under the charter of the Peoples Bank of Bloomington.

2. Eleanor Dick Lyon died January 12, 1992; Helen A. Dick is executor of Eleanor's estate. George F. Dick III died November 20, 1992; the Bank had become trustee of his Living Trust on or about July 28, 1987 and is now trustee of the George F. Dick III trust f/b/o his second wife, Betty. Helen Dick died December 2, 1992; the Bank had become trustee of her Living Trust on or about July 28, 1987 and is now trustee of the Helen Dick trust f/b/o George III's two sons.

CONCLUSIONS AND PRAYER FOR RELIEF

1. Upon its succession to the fiduciary positions previously held by George F. Dick III, the Bank had the duty and

responsibility to bring suit on behalf of the trusts for any wrongdoing by the prior fiduciary --- and the duty to enforce claims to recover all property that properly belonged to the estates of George F. Dick, Jr. and Althea M. Dick.

2. The Bank did not fulfill its aforesaid duties and responsibilities.

3. The Bank became trustee of these estates in December 1978, at which time it knew all material facts pertaining to these various causes of action. The Bank did not file any pleading until the one filed herein on September 22, 1982, which concealed many material facts from the Court (and from Helen A. Dick) to and through the time of [the] March 14, 1984 settlement agreement; the Bank's refusal of the Court's offer to review the settlement agreement; and the Court's entry of the March 14, 1984 order of dismissal.

4. The Bank's aforesaid acts and failures to act were gross, willful and/or wanton breaches of fiduciary duty to Helen A. Dick who, as the record shows, was not independently represented by an attorney and depended upon the Bank to fully and fairly represent her interests.

5. Helen A. Dick had been damaged by being deprived of property of the Estates of George F. Dick, Jr. and Althea M. Dick which ought to have been in trust for her beginning within a reasonable period of time after Althea's death on October 10, 1976.

6. One-third of the value ($214,000) of the aforesaid parcel of Colorado property George F. Dick III gave to his then wife Marilyn as part of their property settlement agreement is, in itself, greater than the $40,000 applied to the trusts f/b/o Helen A. Dick due to the settlement agreement between George III and the Bank.

7. The exact amount of Helen A. Dick's damages cannot be determined until accountings have been made of the benefits George F. Dick III and others (including but not limited to the holding company, Peoples Mid-Illinois Corporation) have received while in possession of property which rightfully belonged to the Estates of George F. Dick, Jr. and

Althea M. Dick.

WHEREFORE, petitioner prays:

A. That the March 14, 1984, order of dismissal be vacated and set aside.

B. That the Court review the settlement agreement and find that said agreement/contract is void and and/or that said agreement/contract does not bar Helen A. Dick from filing a counterclaim against the Bank.

C. That the Court find that, under the circumstances, this pleading is a counterclaim timely filed against the Bank.

D. That The Peoples Bank (formerly Peoples Bank of Bloomington) be ordered and directed to account for (on a per share basis where practical) all shares which were transferred to George F. Dick III by the Bank on March 31, 1959, and all benefits therefrom paid, transferred and/or delivered to George III (and others to whom he sold and/or transferred some shares) by the Bank and/or by Peoples Mid-Illinois Corporation in the form of stock shares after March 31, 1959, and in the form of cash dividends after October 10, 1976.

E. That the Bank be ordered and directed to account for all advantages George III obtained by using property of the Estate of George F. Dick, Jr., as collateral either directly (as to the McLean County Bank) or indirectly (as by representing to other banks, when listing shares on financial statements to obtain loans) that he was the rightful owner of such shares — including but not limited to investments George III made in real property in Colorado, California, New Mexico, Illinois, and any commercial venture, Land Trust, Living Trust or other trust in which George III invested and/or to which he transferred any property or liquid assets.

F. That the Bank be ordered and directed to account for all property in which George III invested during the period of time he made unsecured loans to himself and his then wife Marilyn from liquid assets of the Estate of George F. Dick, Jr., including but not limited to the fair market value of George III's uses of Illinois property (town-houses) as a

residence for his family and the fair market value of George III's family's uses, to the present date, of Colorado property as a residence and/or vacation home.

G. That the Bank be ordered and directed to take all proper steps to set aside Peoples Mid-Illinois Corporation's June 1977 purchase of 500 shares of said Peoples Mid-Illinois Corporation from the Estate of Althea M. Dick and to recover all benefits said holding company has received due to and since the date of said purchase, including but not limited to shares resulting from stock dividends and/or splits and all cash dividends which would have been paid to the Estate of Althea M. Dick except for said purchase.

H. That the Bank be ordered and directed to account (on a per share basis where practical) for all benefits the holding company (Peoples Mid-Illinois Corporation) and its directors have received due to and/or since the 1972 conversion of all shares of the Peoples Bank of Bloomington to the use and beneficial enjoyment of said Peoples Mid-Illinois Corporation.

I. That the Bank, after court approval of the aforesaid accountings, to be compelled to pay Helen A. Dick like sums in the amounts to which she is entitled under the wills of George F. Dick, Jr. and Althea M. Dick.

J. That the Court construe the will of George F. Dick, Jr. (under which Helen A. Dick is the only heir and/or beneficiary still living) and find that present and future distribution to Helen A. Dick of property of the Estate of Althea M. Dick is to be made to Helen A. Dick pursuant to the mutual will of Althea M. Dick which is referred to in the will of George F. Dick, Jr.

K. That the Bank be ordered to account for all management fees it has taken and/or been paid for administering the George F. Dick, Jr. and Althea M. Dick trusts f/b/o Helen A. Dick --- and for the Bank, after court approval of said accounting, be compelled to pay and/or return a like sum to Helen A. Dick.

L. That the Bank be ordered to pay interest to Helen A.

Dick on the foregoing amounts.

M. That the Court find that the Bank has unjustly enriched the holding company (Peoples Mid-Illinois Corporation) by paying dividends to said holding company on shares of the Capital Stock of the Peoples Bank of Bloomington which rightfully belonged to the Estate of George F. Dick, Jr., at the time of the conversion of all shares of said Capital Stock to the use and beneficial enjoyment of said holding company.

N. For a finding that is not unreasonable, under the given circumstances, for the Bank to be required to separately account for shares of the Capital Stock of the Peoples Bank of Bloomington which properly belong to the Estate of George F. Dick, Jr. and/or to Helen A. Dick --- and for the Bank to be ordered and directed to pay Helen A. Dick (instead of to the holding company, Peoples Mid-Illinois Corporation) all past and future stock dividends and/or splits and/or cash dividends on all shares of the Capital Stock of the Peoples Bank of Bloomington to which Helen A. Dick is entitled under the will of George F. Dick, Jr.

O. For punitive or exemplary damages against the Bank and in favor of Helen A. Dick.

P. For such other and further, or different, relief as the Court may deem just and proper.

HELEN A. DICK

Helen A. Dick
3323 - 13th Avenue Court
Moline, IL 61265
Phone: (309) 762-7014

VERIFICATION

State of Illinois
County of Rock Island ss.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned Helen A. Dick certifies that the statements set forth in the foregoing instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

HELEN A. DICK

Subscribed and sworn to before me at Moline, Rock Island County, Illinois, this 10th day of January, 1994.

FREDRICA E. RUDOLPH
Notary Public

SETTLEMENT AGREEMENT

This agreement is made March 14, 1984, by Peoples Bank of Bloomington, an Illinois banking corporation, as successor trustee of each trust created by the will of George F. Dick Jr., deceased, and trustee of each trust created by the will of Althea M. Dick, deceased, (Bank), and George F. Dick, III (Son).

RECITALS:

A. Bank has conducted a thorough investigation of the actions of Son in his capacities as trustee of each trust created by the will of George F. Dick, Jr., deceased, as executor of the estate of Althea M. Dick, deceased, as agent for Althea M. Dick while she was living and individually, including such times as he was an officer or director of Bank while it was successor trustee and trustee as aforesaid, with respect to all funds Son derived from each such trust and estate, the estate of George F. Dick, Jr., deceased, the trusts created by the will of Althea M. Dick, deceased, and from Althea M. Dick while she was living.

B. Bank is plaintiff and a counterdefendant and Son is a defendant and a counterplaintiff in certain litigation pending in the Circuit Court of McLean County, Illinois, docketed there as No. 82-CH-124 and entitled "Peoples Bank of Bloomington, as successor trustee of trusts created by the will of George F. Dick, Jr., deceased, and as trustee of trusts created by the will of Althea M. Dick, deceased, Plaintiff, vs. George F. Dick III, et al., Defendants."

C. The claims made by Bank in such litigation arose out of those actions of Son described in paragraph A of these recitals and as a direct result thereof the respective beneficiaries of each trust described in such paragraph A, except Son, and the respective heirs of Althea M. Dick, deceased, except Son, allegedly sustained certain injuries and damages. Such claims concern substantial sums of money held by Son under claim of right to such funds by Bank, in its

capacities as successor trustee and trustee as aforesaid.

D. The parties agree to settle their differences and compromise the claims by Bank which were or could have been made in such litigation and enter into this agreement to fulfill the fiduciary responsibilities of Bank to the beneficiaries of each such trust and to protect the income of Son.

In consideration of the promises made herein, the parties agree as follows:

1. Son shall at the execution of this agreement, pay to Bank $120,000.00, which shall be immediately applied by Bank specifically as follows:

(a) To the following subtrusts of the trust created by the will of George F. Dick, Jr., deceased, as they are now identified by the records of Bank:

(i) $20,000.00 added to the corpus of the "Geo. F. Dick, Jr., F/B/O/ Eleanor Lyon, No. TW 3214" trust,

(ii) $20,000.00 added to the corpus of the "Geo. F. Dick, Jr., F/B/O/ Helen Dick, No. TW 3213" trust.

(iii)$20,000.00 added to the corpus of the "Geo. F. Dick, Jr., F/B/O/ Helen A. Dick, Jr., No. TW 3215" trust;

(b) To the following trusts created by the will of Althea M. Dick, deceased, as they are now identified by the records of Bank:

(i) $20,000.00 added to the corpus of the "Althea M. Dick F/B/O Eleanor Lyon, No. TW 3656" trust;

(ii) $20,000.00 added to the corpus of the "Althea M. Dick F/B/O/ Helen A. Dick, Jr., No. TW 3655" trust; and

(c) $20,000.00 for partial reimbursement of Bank's attorneys' fees and expenses incurred in such litigation.

2. Bank warrants that it and its officers are duly authorized to execute this agreement and fulfill its terms.

3. Immediately upon delivery to Bank of $120,000.00 by Son as aforesaid, Bank will execute and deliver to Son a release in the form marked Exhibit A and attached hereto.

4. Immediately upon delivery to Son by Bank of a properly executed release as aforesaid, Son shall relinquish all his interest in the trust created by the will of Althea M. Dick, deceased, by executing the assignment marked Exhibit B and attached hereto and shall deliver an executed copy of such assignment to Bank.

5. Promptly after execution of this agreement the parties shall cause all actions brought by Bank against Son in its original complaint and all subsequent pleadings and the action brought by Son against Bank in his counterclaim in the Lawsuit described above to be dismissed with prejudice.

6. It is agreed that this agreement is a compromise of doubtful and disputed claims, that the payment made by Son and his undertakings described herein are not to be construed as an admission of liability and that Son denies liability and intends to avoid litigation and buy his peace.

7. This document is intended as a complete and exclusive statement of the agreement between the parties. It may not be modified or rescinded except by a signed writing.

8. This agreement shall bind and inure to the benefit of the personal representatives, heirs, successors and assigns of the respective parties.

Dated March 14, 1984.

PEOPLES BANK OF BLOOMINGTON, an Illinois banking corporation, as successor trustee of trusts created by the will of George F. Dick, Jr., deceased, as trustee of trusts created by the will of Althea M. Dick, deceased, and in its corporate capacity,

By JERRY D. GUMMERE
Its President

ATTEST:
ANDREW F. ANDERSON
Its Exc. V. P. & Secretary

GEORGE F. DICK, III
(George F. Dick, III)

RELEASE

The undersigned, Peoples Bank of Bloomington, an Illinois banking corporation, as successor trustee of each trust created by the will of George F. Dick, Jr., deceased, and as trustee of each trust created by the will of Althea M. Dick, deceased, in consideration of the payment to the undersigned of $120,000.00 by George F. Dick, III, as described in the settlement agreement entered into between the undersigned and George F. Dick, III, on March 14, 1984, and the undertakings of George F. Dick, III, described in such settlement agreement does hereby and for its successors and assigns release George F. Dick, III, and his respective agents, servants, personal representatives, heirs, successors and assigns, and all other persons and legal entities, from all claims, actions, causes of action, demands, rights, damages, costs, expenses and compensation whatsoever which the undersigned now has or which may hereafter accrue on account of or in any way arising out of all known and unknown, foreseen and unforeseen, injuries and damages and the consequences thereof sustained by the undersigned and each trust created by the will of George F. Dick, Jr., deceased, and the will of Althea M. Dick, deceased, respectively, resulting or to result from the actions of George F. Dick, III, in his capacities as trustee of each trust created by the will of George F. Dick, Jr., deceased, as executor of the estate of Althea M. Dick, deceased, as agent for Althea M. Dick and individually, including such times as he was an officer or director of Bank while it was successor trustee and trustee as aforesaid, with respect to all funds George F. Dick, III, derived from each such trust and estate, the estate of George F. Dick, Jr., deceased, the trusts created by the will of Althea M. Dick, deceased, and from Althea M. Dick while she was living, specifically including, but not limited to, all acts or omissions, negligent, intentional or wilful and wanton, or amounting to a breach of fiduciary duty or fraud, or

both, which were or reasonably could have been made a part of certain litigation pending in the Circuit Court of McLean County, Illinois, docketed there as No. 82-CH-124 and entitled "Peoples Bank of Bloomington, as successor trustee of trusts created by the will of George F. Dick, Jr., deceased, and as trustee of trustee of trusts created by the will of Althea M. Dick, deceased, Plaintiff, vs. George F. Dick III, et al., Defendants."

It is agreed that this settlement is the compromise of a doubtful and disputed claim, that the payment made and the undertakings of George F. Dick, III, described in such settlement agreement are not to be construed as an admission of liability on the part of the party hereby released, and that such releasee denies liability therefor and intends merely to avoid litigation and buy his peace.

The undersigned further declares and represents that no promise, inducement or agreement not herein expressed has been made to the undersigned, that this release and such settlement agreement contain the entire agreement between the parties hereto and that the terms of this release are contractual and not merely recitals.

The undersigned warrants that it and its officers are duly authorized to execute this release and fulfill its terms.

Executed March ____, 1984, at Bloomington, Illinois.

PEOPLES BANK OF BLOOMINGTON, an Illinois banking corporation, as successor trustee of trusts created by the will of George F. Dick, Jr., deceased, as trustee of trusts created by the will of Althea M. Dick, deceased, and in its corporate capacity,

By _____

Its _____

ATTEST:

_____

Its _____

ASSIGNMENT AND AGREEMENT

This Assignment and Agreement made and entered into this 14 day of March, A.D., 1984, by and between GEORGE F. DICK, III, hereinafter referred to as the Assignor and JAMES DICK and GEORGE F. DICK, IV, designated as Assignees, but without necessity of execution hereof by the Assignees.

WITNESSETH: That WHEREAS, the Assignor has heretofore entered into a certain Settlement Agreement of even date with the Peoples Bank of Bloomington, Bloomington, Illinois, as Trustee of the Testamentary Trusts created by George F. Dick, Jr., and Althea M. Dick, both deceased, and as part of the consideration for said Settlement Agreement, the Assignor has agreed to execute this Assignment and Agreement; and,

WHEREAS, JAMES DICK and GEORGE F. DICK, IV, are the sons of the Assignor; and,

WHEREAS, the Assignor has an interest in paragraph SIXTH (d) of the Last Will and Testament of Althea M. Dick, deceased, which Will is dated January 23, 1969.

NOW, THEREFORE, GEORGE F. DICK, III, designated as Assignor, for and in consideration of the terms of the Settlement Agreement entered into between himself and the Peoples Bank of Bloomington, as Trustee aforesaid, does hereby agree as follows:

1. That by the execution of this instrument he hereby assigns to JAMES DICK and GEORGE F. DICK, IV, as Assignees, all of his right, title and interest under the provisions of the said Last Will and Testament of Althea M. Dick, deceased, except for his testamentary power of appointment provided for in paragraph SIXTH (d) of said Last Will and Testament.

2. That the Assignor agrees to exercise the power of appointment granted to him under paragraph SIXTH (d) of said Last Will and Testament of Althea M. Dick, deceased, in favor of his two said sons, JAMES DICK and GEORGE F.

DICK, IV.

3. That this instrument shall not be construed as a violation of the provisions of the Last Will and Testament of Althea M. Dick, deceased, and in the event it is so construed or so contended by any interested party, then in that event the Trustor agrees that in reference to the provisions of paragraph I above, that in lieu thereof he agrees to include in the testamentary provisions of his Last Will and Testament that any interest that he receives under the provisions of the Last Will and Testament of Althea M. Dick, during his life, shall be bequeathed and devised by his Last Will and Testament to his two said sons, except that he should be privileged to utilize such portion of the income from said funds for the payment of taxes charged and attributable thereto.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal to this instrument in duplicate, the day and year first written, at Bloomington, Illinois.

_____ (SEAL)
GEORGE F. DICK, III Assignor

I, GEORGE F. DICK, JR., of Bloomington, McLean County, Illinois, do make, publish and declare this to be my Last Will and Testament, hereby revoking all other Wills by me heretofore made.

It is my wish that the Executors hereinafter named shall pay my funeral expenses and debts, including Federal Estate and State Inheritance Taxes.

Whatever automobile I may own at the time of my death, I give to my wife, Althea M. Dick.

I hereby give a life estate in all of my property to my wife, Althea M. Dick, she to have the full possession and sole management thereof as long as she shall live.

I also empower my wife, Althea M. Dick, to have authority to sell, transfer and convey any of the assets in my estate during her lifetime which she may think is for the best interest of my estate and I waive the requirements of furnishing bond by her in said sales and the purchaser is not required to see to the proper application of the purchase money.

After the death of my wife, Althea M. Dick, the remaining Executor of this Will shall transfer and assign to my son, George F. Dick, III, Eighty (80) Shares of the Capital Stock of the Peoples Bank of Bloomington as and for his individual property.

All the rest and residue of my estate remaining shall pass to my son, George F. Dick, III, as Trustee, for the benefit of my children, Helen Dick, Eleanor Dick Lyon, and Helen A. Dick, under the terms and conditions hereinafter set forth.

Said Trustee shall manage and care for the property that comes into his possession in the same manner that any prudent man would manage and care for his property; shall rent the land; look after the fertility thereof; insure the buildings for their insurable value; and do any and all things that any prudent owner would do in the management of his own land and property.

EXHIBIT "B"

I own an undivided two-thirds (2/3) interest in a farm in West Township, McLean County, Illinois, my brother's Estate owning the remaining one-third (1/3) interest thereof. It is my desire that this farm be retained, if possible, however, I realize that the Carl R. Dick Estate may at some future time desire its interest sold. In such case, the Trustee herein is fully authorized to join in the sale of said farm so that the farm may be sold as a whole; he is fully authorized and empowered to make any contract necessary, and also to make deed or deeds conveying my interest herein as fully as I might do if living. My Trustee is also fully empowered to purchase my brother's one-third interest if he feels it is for the best interest of my estate so to do. In connection with the sale of real estate made by the Trustee herein, I waive bond required by statute, and no purchaser shall see to the proper application of the purchase price. If it should at any time during the life of the trust herein created be the desire of the Trustees of the Carl R. Dick Estate and the desire of George F. Dick, III, Trustee, to partition said farm lands in kind, then George F. Dick, III, Trustee, in his discretion may agree to a partition, division or exchange or a sale and convert such undivided interest into an interest in severalty, or in cash, and to that end the said George F. Dick, III, Trustee, is fully authorized to make all necessary contracts, and as such Trustee to execute all necessary deeds of partition and accept all conveyances which may be necessary or appropriate to accomplish such partition.

Said Trustee is fully authorized and directed to hold as an investment in said Trust Estate the Capital Stock of the Peoples Bank of Bloomington, which shall be a part of my Trust Estate. If it becomes necessary at any time to sell and dispose of said Stock due to the fact that any of my children find it necessary to go into the corpus of said Estate, then in that case the Trustee is empowered to sell and dispose of it. Said Trustee is also authorized to dispose of any other property in said Trust if he thinks it is for the best interest

of said estate.

I desire my son, George F. Dick, III, to vote any and all Capital Stock of the Peoples Bank of Bloomington in said Trust during the life of said Trust.

The income from said Trust Estate shall be divided into three equal parts and one part paid to each of my three daughters hereinabove named. I request that said distribution of income be made in quarterly payments.

The Trust for my daughter, Eleanor D. Lyon, shall continue for and during her natural life, however, during her life should the income from her share in said Trust Estate not be sufficient for her proper maintenance and support, then the Trustee in his discretion is authorized to allow her to withdraw from the corpus such sums as may be necessary from time to time for her personal and individual comfort, maintenance and support. Whatever is left in the corpus of said estate belonging to Eleanor D. Lyon at the time of her death, shall be equally divided between Helen Dick, Helen A. Dick and George F. Dick, III, and by the Trustee paid over to them.

At the death of my daughter, Eleanor D. Lyon, I desire the Trusts herein established for my three daughters shall cease and determine, and I authorize the Trustee herein to pay and turn over to my daughter, Helen Dick, her one-third interest in said Trust, less any withdrawals of principal made by her, and also to pay to Helen A. Dick, her one-third interest in said Trust, less any withdrawals of principal made by her. The Trustee is further authorized to distribute whatever remains in the corpus of the Trust established for my daughter, Eleanor D. Lyon, equally between my daughters, Helen Dick and Helen A. Dick, and my son, George F. Dick, III. In the event that the income from the Trust Estate going to Helen Dick and Helen A. Dick should not be sufficient for the proper maintenance and support of either of them, then the Trustee in his discretion is authorized to allow either one or both of them to withdraw from the corpus of their Trusts such sum as may be necessary from time to

time for her or their personal and individual comfort, maintenance and support.

The Trustee shall keep a record of any withdrawals of principal made by any of my daughters during the life of the Trusts herein established and shall make distribution of the income from said Trusts, taking into account the withdrawals from said individual trusts on account of any withdrawals of corpus made individually by any of my daughters.

No interest under this Will shall be transferable or assignable by any beneficiary (except by the Wills of Helen Dick and Helen A. Dick as provided above) or subject to the claims of their creditors, and all income distributions shall be paid to each beneficiary in person and not on any written order or assignment from any beneficiary.

The Trustee shall be entitled to reasonable compensation for his services.

My wife, Althea M. Dick, in her Will has established a Trust similar to the one I have established here and I authorize the Trustee in each of said Wills to consolidate the Trust in my Will and my wife's Will and to operate it as one Trust Estate.

I nominate and appoint my wife, Althea M. Dick, and my son, George F. Dick, III, to be the Executors of this my Last Will and Testament and request the Court to allow them to qualify as such without furnishing bond as required by statute.

I also nominate and appoint my son, George F. Dick, III, to be Trustee under this Will and request that he not be required to furnish bond, and in the event my son, George F. Dick, III, should not act as Trustee, or for any reason should cease to act as Trustee, then the Peoples Bank of Bloomington, Bloomington, Illinois, is appointed Trustee under this Will with all the powers and authority given to my son, George F. Dick, III.

Dated at Bloomington, Illinois, this 14th day of July, A.D. 1953.

GEORGE F. DICK JR (SEAL)

The foregoing instrument was on the date thereof signed, sealed, published and declared by the said testator, George F. Dick, Jr., as and for his Last Will and Testament in our presence, who at his request and in his presence and in the presence of each other have subscribed our names hereto as witnesses, believing him to be of sound mind and memory at this time said Will was executed.

HELEN J. FIGG of Bloomington, Illinois.

FRANK R. FIGG of Bloomington, Illinois.

LAST WILL AND TESTAMENT
OF
ALTHEA M. DICK

I, ALTHEA M. DICK, of the City of Bloomington, County of McLean, State of Illinois, being of sound and disposing mind and memory, do hereby declare this to be my Last Will and Testament, hereby revoking all former Wills by me heretofore made.

FIRST: I direct my Executor or Successor Executor, hereinafter named, to pay all of my just debts and funeral expenses from the assets of my Estate, as soon after my decease as is practicable and consistent with the best interests of my Estate; I further direct my said Executor or Successor Executor to pay from the assets of my Estate all Federal estate, inheritance, succession and income taxes that may be levied against my Estate and against the shares being transferred herein so that the same will pass to the legatees, devisees and beneficiaries herein free and clear of such taxes and without obligation upon their part to pay the same.

SECOND: I give and bequeath to my daughter, HELEN DICK, the following described items, having previously given to my said daughter all the furnishings in my residence and other personal belongings:

a) All my silverware, jewelry and personal effects.

b) Any automobile that I may own at the time of my decease.

THIRD: I direct my Executor, hereinafter named, to sell at either private or public sale, upon such terms as my Executor may determine, and at such time that my said Executor may determine in his sole discretion, my residence property at 116 South Mercer Avenue, Bloomington, Illinois. In reference to the sale of my said property by my Executor, his determination in reference to the sale of the same, to include the terms, time and provisions of sale, shall

not be questioned. I further authorize my said Executor to execute such deed or deeds as may be necessary in order to transfer the title of the property sold to the purchaser thereof. I direct that my said Executor pay the net proceeds of the sale of my residence property, after all expenses of sale, to my daughter, HELEN DICK, in fee simple absolute.

FOURTH: I authorize my Executor hereinafter named to sell any or all of my property, unless stated in this, my Last Will and Testament, to the contrary, at private or public sale, in the sole discretion of my Executor, in order to make division of my property, to pay the items provided for in Paragraph FIRST above, and to properly administer my Estate. I further authorize my said Executor to execute such deed, deeds or bills of sale as may be necessary in order to transfer the title of the property sold to the purchaser or purchasers thereof.

FIFTH: I direct my Executor to divide all the rest, remainder and residue of my estate into three (3) equal portions or shares. Said division may be made in cash or in kind, with the selection and the division to be in the sole discretion of my Executor. I give, devise and bequeath one of said shares to my daughter, HELEN DICK, in fee simple absolute.

SIXTH: I give, bequeath and devise one of the three equal shares mentioned in the preceding paragraph to The Peoples Bank of Bloomington, Illinois, as Trustee, upon the following trusts and uses:

a) The Trustee is authorized to retain any investments that I may own upon my decease, including the stock of Peoples Bank of Bloomington, Illinois, without incurring liability upon its part.

b) The corpus of the Trust shall be invested and reinvested in the discretion of my Trustee and the net income therefrom, after payment of all necessary expenses of administration of the Trust, shall be paid at least quarterly to my daughter, Eleanor Dick Lyon. In the event that the income from the trust is insufficient for the proper care,

maintenance, support, medical expenses and hospital expenses of my said daughter, Eleanor Dick Lyon, in the sole discretion of my Trustee, taking into consideration her income from all other sources, the said Trustee is authorized to invade the corpus of the trust for the payment of the care, maintenance, support, medical expenses and hospital expenses of my said daughter.

c) No interest or income under this Trust shall be assignable by any beneficiary or be subject to the claims of his or her creditors, including claims for alimony or separate maintenance.

d) Upon the decease of my daughter, ELEANOR DICK LYON, this Trust shall terminate and the corpus thereof, together with any accrued income, shall be paid to my daughter, HELEN DICK, if she is then living, and if she is not then living, then the Trustee shall pay said corpus and accrued income to my son, GEORGE F. DICK, III, or shall be distributed to or for the benefit of such persons or organizations, including my said son's estate, in such proportions and subject to such trusts and conditions as my said son directs by his Will specifically referring to this power to appoint, in the event that he is not living at the termination of said Trust.

SEVENTH: I give, bequeath and devise the third of the three shares described in the second preceding paragraph, of the said rest, remainder and residue of my estate, to the Peoples Bank of Bloomington, as Trustee, upon the following trusts and uses:

a) That the said Trustee is authorized to retain any investments that I may own upon my decease, including the stock of the Peoples Bank of Bloomington, Illinois, without incurring liability upon its part.

b) That the Trustee shall invest and reinvest the corpus of the Trust, and after the payment of all necessary expenses of administering said Trust, shall pay the net income to my daughter, HELEN A. DICK YEAGER, at least quarterly. In the event the income from said Trust is, in the opinion of the

Trustee, taking into consideration the income of my said daughter, HELEN A. DICK YEAGER, from other sources, insufficient for her proper care, maintenance, support, medical expenses and hospital expenses, the Trustee in its sole discretion, may invade the corpus of the Trust for the payment of said care, maintenance, support, medical expenses and hospital expenses. My said daughter, HELEN A. DICK YEAGER, has several children, and my Trustee is instructed to consider their needs for care, maintenance, support and education in determining the needs of my daughter, HELEN A. DICK YEAGER.

c) No interest under this Trust shall be assignable by any beneficiary or be subject to the claims of his or her creditors, including claims for alimony or separate maintenance.

d) That upon the death of my daughter, HELEN A. DICK YEAGER, this Trust shall continue for the benefit of her children, until the youngest child of my said daughter has attained the age of 25 years and at said time this Trust shall terminate, and the corpus thereof, together with accrued income, shall be distributed to the children of HELEN A. DICK YEAGER in equal portions, share and share alike, provided further that if any of said children of HELEN A. DICK YEAGER have predeceased said termination date leaving issue surviving, the share of said deceased child shall be distributed to the child's issue per stirpes and not per capita. During the continuation of the Trust until the youngest child of the said HELEN A. DICK YEAGER has reached the age of 25 years, my Trustee shall pay the net income of the Trust to said children at least quarterly, in equal portions, share and share alike. My Trustee is further authorized to invade the corpus of the Trust for the care, maintenance, support, education, medical and hospital expenses of the said children of HELEN A. DICK YEAGER, in the sole discretion of my said Trustee, taking into consideration their income from all other sources.

EIGHTH: That my said Trustee, in reference to both of

the above created trusts, is authorized and empowered to manage, care for, invest and reinvest, improve, protect, control, mortgage, pledge, sell for cash or on credit at public or private sale, partition, exchange or otherwise deal with the trust properties, or any part thereof, in its discretion, in any and every way in which any owner having unrestricted ownership and control thereof could manage, care for, invest and reinvest, improve, protect, control, mortgage, pledge, sell, partition, exchange or otherwise deal with the same. In connection with the sale of said trust property to carry out the provisions of this Trust, said Trustee's decision as to the time and method of sale of said property shall not be questioned. The Trustee shall have power to vote any stock or other voting securities held hereunder; to issue proxies to vote the same to any person or persons; and to exercise or sell any subscription rights. In connection with the sale of real estate or any interest therein, said Trustee shall, at its discretion, sell said property at public or private sale, and upon such terms as seem most advisable to said Trustee, and said Trustee is given full power to make, execute and deliver all necessary instruments to pass title to the purchaser or purchasers thereof so that they will be vested with full and complete title to said property the same as I might do if living. The Trustee shall further pay all taxes or lawful assessments which may be levied against any of the Trust property. Said Trustee may incur and shall pay any necessary expenses in connection with the proper administration of said Trust, which, together with its own reasonable compensation, shall be charged against either the income or the principal of said Trust, or both.

NINTH: That in reference to above created Trust for the benefit of my daughter, HELEN A. DICK YEAGER, I direct that notwithstanding any provision contained in this, my Last Will and Testament, pertaining to said Trust, at the end of 21 years after the death of my daughter HELEN A. DICK YEAGER, the Trustee shall distribute the corpus of the Trust, together with accrued income, to her children

then living and to the issue of any deceased child, as is provided in said Trust, unless distribution was made sooner under the provisions of Paragraph SEVENTH (d).

LASTLY: I nominate, constitute and appoint my son, GEORGE F. DICK, III, as Executor of this, my Last Will and Testament, to act in said capacity without bond. In the event that my said son, GEORGE F. DICK, III, predeceases me or fails to qualify as Executor for any reason whatsoever, then I nominate, constitute and appoint the Peoples Bank of Bloomington, Illinois, as Successor Executor of this, my last Will and Testament. I further appoint the said Peoples Bank of Bloomington, Illinois, as Trustee of the above created Trusts.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of January, A. D., 1969.

ALTHEA M. DICK (SEAL)

The foregoing instrument was at the date thereof, signed, sealed, published and declared by ALTHEA M. DICK, as and for her Last Will and Testament, in the presence of us, who at her request, in her presence, and in the presence of each other have subscribed our names as witnesses thereto believing the said ALTHEA M. DICK to be of sound mind and memory, free from all restraint and from all undue influence at the time she and we so subscribed our names as Testatrix and as witnesses as aforesaid.

MAUD R. SHINALL of Bloomington, Ill.
HAROLD L. SHINALL, M.D. of Bloomington, Illinois
_____ of _____

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased,	))))))NO. 82-CH-124
Plaintiff,	)
vs.	)
GEORGE F. DICK II, et al.,	)
Defendants.	)

AFFIDAVIT OF HELEN A. DICK

State of Illinois
County of Rock Island =

1. This affidavit is made in support of my Petition to Vacate Order(s) Obtained by Fraud upon the Court.

2. Exhibit "A" to said petition is a copy of the settlement agreement between George F. Dick III and the Bank as it was when handed to me by the Bank's counsel in the courtroom on March 14, 1984.

3. At various times from the time the Bank filed its pleading herein (September 22, 1982) to the date of the aforesaid settlement agreement, I informed the Bank's attorneys that the combined estates of George F. Dick, Jr. and Althea M. Dick were worth approximately half a million dollars (not including personal property such as jewelry, silverware, and household furnishings) when George F. Dick, Jr. died in May 1955---and that in May 1955, 80 shares of the Capital Stock of the Peoples Bank of Bloomington had a total value of $50,000---and that the reason George F. Dick III was not to receive an equal portion of said estates was

that George Jr. had given George F. Dick III a job at the Bank and enough shares (10) to qualify him as a director, whereas none of the three daughters were self-supporting or even employed.

4. In about mid-1983, one of the Bank's attorneys told me that the Bank's action was what he termed a "net worth case," based on George F. Dick III's having become a millionaire due to advantages he had obtained while using property of the Estate of George F. Dick, Jr. for his (George III's) own benefit during the lifetime of Althea M. Dick.

5. In about mid-1983, another of the Bank's attorneys told me, in answer to a question I had asked of him, that property worth half a million dollars in 1955 would, if properly managed, have been worth about three million dollars by 1982-83.

6. Prior to the February 22, 1984 pre-trial conference and hearings on motions for partial summery judgment, one of the Bank's attorneys told me, "If we lose our Count I we might as well fold,"

7. Subsequent to hearings on motions for partial summary judgment, said attorney represented to me, "Well, we lost our Count I."

8. I did not believe that the representation that the Bank had "lost" Count I was accurate and continued to believe that trial of the Bank's action as a "net worth case" would show the Court great advantages George III had obtained (some of which were no longer in his possession when his Financial Statements showed he had become a millionaire) while constructive trustee/ trustee de son tort of property of the Estate of George F. Dick, Jr. during Althea M. Dick's lifetime---until the Bank's counsel handed me copies of the settlement agreement and executed stipulation, at which time I glanced through the settlement agreement and said settlement agreement convinced me that the Bank must have "lost" its Count I.

9. While in the courtroom on March 14, 1984, I told the Bank's counsel that I believed there was no way or

procedure by which I could even try to set aside the settlement agreement between George III and the Bank or any other agreement to which I had not been a party.

10. The trustee Bank and/or its counsel has never informed me as to any way or procedure by which I could try to set aside said settlement agreement.

11. I have been informed, and I believe, that (although he remained a director of the holding company, Peoples Mid-Illinois Corporation) George F. Dick III resigned as chairman of the holding company's board of directors in 1981 and that said board of directors purportedly operated "without" a chairman until a few weeks after Jerry Gummere signed the aforesaid settlement agreement; resigned as president of the Bank; and became chairman of the board of directors of Peoples Mid-Illinois Corporation (said holding company).

12. Andrew F. Anderson became the Bank's president when Jerry Gummere resigned in 1984.

13. I believe that Andrew F. Anderson would not have signed the aforesaid settlement agreement and/or that George F. Dick III knew he could not depend on Mr. Anderson to sign any such agreement.

14. One of the Bank's attorneys several times told me, during the course of the action filed by the Bank, that the will of George F. Dick, Jr. gave Althea the power to "defeat" any interest of George F. Dick III's and that George F. Dick III did not have a vested interest in any property during Althea's lifetime.

15. Research as to construction of wills has led me to believe that George F. Dick III's interest under the will of George F. Dick, Jr. was a "specific legacy" and a "void interest"---and that George III diminished his interest under said will when proposing and recommending the 30 for 1 stock dividend and split in 1967---and that George F. Dick III altogether defeated his interest under said will when participating in the 1972 conversion of all shares of the Peoples Bank of Bloomington to the use and beneficial enjoyment of a holding company.

16. My grandfather/adoptive father, George F. Dick, Jr. was an attorney who practiced law for approximately 15 years before he gave up his law practice to join the Bank (of which his father had been one of the founders) when the Bank needed him in 1923.

17. George F. Dick, Jr. reared me to love the Peoples Bank of Bloomington and to expect that it would eventually be taking care of me as my trustee.

18. After I was served with a copy of the Bank's September 1982 pleading and learned that Peoples Mid-Illinois Corporation is a "holding company," not a bank, I learned that holding company directors can obtain greater benefits for themselves (e.g. directors' fees and bonuses) than they can obtain as directors of the Bank---and it surprised me not at all that George F. Dick, Jr. intended to prevent George III from participating in the formation of a holding company---and that George Jr. wrote his will accordingly.

19. No court has ever reviewed the settlement agreement between the Bank and George F. Dick III.

20. No court has ever said that it was proper for the Bank to permit George III to obtain and/or to retain advantages he had obtained for himself while he was in possession and control of property of the Estate of George F. Dick, Jr., during the lifetime of Althea M. Dick.

HELEN A. DICK

Subscribed and sworn to before me at Moline, Rock Island County, Illinois, this 10th day of January, 1994.

FREDRICA E. RUDOLPH
Notary Public

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, et al., Defendants.	)	

MOTION FOR INVOLUNTARY DISMISSAL - 735ILCS5/2-619(a)(4)(5) AND MOTION FOR ATTORNEY FEES - SUPREME COURT RULE 137

NOW COMES PEOPLES BANK OF BLOOMINGTON [styled The Peoples Bank] by Samuels, Miller, Schroeder, Jackson & Sly, its attorneys, and for its Motion For Involuntary Dismissal based upon certain defects or defenses, 735ILCS5/2-619(a)(4)(5) and Motion For Attorney Fees - Supreme Court Rule 137, says:

1. From the petition served upon Peoples Bank it appears that on January 11, 1994, Helen A. Dick filed a pro se a pleading titled "Petition To Vacate Order(s) Obtained By Fraud Upon The Court" in this proceeding. The Petition is in 20 pages not counting Exhibits; said Exhibits include an "Affidavit of Helen Dick" in 4 pages dated the 10th day of January, 1994.

2. Helen A. Dick requests "relief" in paragraphs

identified as "A" through "P" which appear beginning at the bottom of page 17 of the 20 page Petition she has filed herein.

3. The substance of the complaints upon which these prayers for relief are based relates solely to the validity of a settlement entered in this cause between Peoples Bank of Bloomington. as Successor Trustee of Trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of Trusts Created by the Will of Althea M. Dick, deceased, Plaintiff, with George F. Dick, III, a predecessor trustee, and defendant.

4. That 1984 settlement resulted in a dismissal of this cause as to the original Complaint and Answer on March 14, 1984.

5. This case continued for a time thereafter as litigation based upon a Crossclaim asserted by Helen A. Dick against George F. Dick, III. This Crossclaim action was ultimately resolved on its merits against Helen A. Dick whose appeal proved unsuccessful. Cf. *Peoples Bank v. Dick* (1985), 135 Ill.App.3d 1170.

6. The Court is referred to the Appellate Court decision in the last of five suits litigated by Helen Dick (but for this one)-*Dick v. Peoples Mid-Illinois Corporation,* 242 Ill. App.3d 297. At page 298 is found a brief summary of these five previous actions initiated by or participated in by Helen A. Dick involving the same subject matter which is the core of her Petition filed in this cause and to which this Motion is directed.

7. Leaving aside conclusions and extraneous matters contained in Helen Dick's lengthy Petition, the Court is directed to the relief requested by her (the narration of which begins at page 17). There the Court can see Helen Dick is seeking to relitigate the appropriateness of the settlement of the initial litigation brought by Peoples Bank against the predecessor trustee George F. Dick, Ill in 1982.

8. There have been two Appellate Court decisions which have held that Helen Dick may not litigate the settlement between George F. Dick, III and Peoples Bank of March

1984. These cases are *Dick v. People Illinois Corporation* (1990), 195 Ill.App.3d 654 at pages 659-660. The second case where this ruling is affirmed by the Appellate Court is *Dick v. Peoples Illinois Corp.* (1993), 242 Ill.App.3d 297 at page 303 where language from the decision in *Dick v. Peoples Bank,* 195 Ill.App.3d is repeated.

9. In the face of two Appellate Court decisions, not to mention decisions at the trial court level, Helen Dick again by the Petition she has filed in this cause, seeks to raise and relitigate the same issues as to the 1984 settlement.

10. Supreme Court Rule 137 provides in part as follows:

> Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion or other paper and state his address...The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or cause or unnecessary delay or needless increase in the cost of litigation...If a pleading, motion, or other papers signed in violation of this rule, the court, upon motion or upon its initiative, may impose upon the person who signed it, a representative party, or both, and appropriate sanction, which

> may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney fee.

11. Based on the authority of the Appellate Court Opinion in *Dick v. Peoples Mid-Illinois Corp.* (1993), 242 Ill.App.3d 297, including the prior litigation referenced therein, it is patent the allegations of the Petition filed herein, represent or purport to represent a cause or causes of action barred by estoppel by verdict, res adjudicata, the statute of limitations, or the petitioner's lack of standing.

12. By filing this Petition Helen Dick manifests contempt for the prior ruling of this and the Appellate Court; she shows disdain for the holding of these courts and manifests an intention to litigate with Peoples Bank out of her frustration at the unfavorable conclusions of the prior suits she has pursued.

WHEREFORE, PEOPLES BANK OF BLOOMINGTON, as successor trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, prays as follows:

A. For an Order of Dismissal with prejudice of the Petition herein under the provisions of 735ILCS5/2-619(a)(4)and(5).

B. The Court award all of the costs and attorney's fees incurred by Peoples Bank in defending against this Petition as provided by Supreme Court Rule 137 against Helen Dick.

PEOPLES BANK OF BLOOMINGTON, as successor trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiffs

By: SAMUELS, MILLER, SCHROEDER,
JACKSON & SLY

BY: JOHN E. FICK
Its Attorneys

JOHN E. FICK
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IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, et al., Defendants.	)	

PETITIONER'S OPPOSITION TO PEOPLES BANK'S MOTION FOR INVOLUNTARY DISMISSAL
AND
PETITIONER'S MOTION FOR SANCTIONS UNDER SUPREME COURT RULE 137

NOW COMES PETITIONER HELEN A. DICK, pro se, and, in opposition to Peoples Bank's Motion for Involuntary Dismissal (filed February 3, 1994) and as her Motion for Sanctions Under Supreme Court Rule 137, hereby states the following:

I.

AS TO ALL ISSUES RAISED BY THE BANK

1. The central facts of a petition to vacate are those which allege that the order or judgment was obtained by fraud. Manning v. Meier (4th Dist. 1983) 114 Ill.App.3d 835, 449 N.E.2d 560, 564.

2. When considering a motion to dismiss, all well-pleaded facts are admitted and taken as true. Long v. City of New Boston (1982) 91 Ill.2d 456., 440 N.E.2d 625, 628.

II.

THE RECORD SHOWS THAT IT IS NOT POSSIBLE FOR THE BANK TO MEET THE BURDEN OF PROVING THAT THIS CLAIM IS BARRED BY ANY PRIOR JUDGMENT.

1. The central facts of the Petition to Vacate are the facts which allege that the March 14, 1984 order was obtained by fraud, including but not limited to false and misleading statements in the complaint filed by the Bank on September 22, 1982.

2. The record shows that Helen A. Dick has not previously filed any petition to vacate. A petition to vacate must not only be filed in the action in which the judgment or order was entered, it must be brought before the same judge who rendered the original judgment. Lofendo v. Ozog (1st Dist. 1983) 118 Ill.App.3d 237, 454 N.E.2d 806, 810-811.

3. The party pleading res judicata has the burden of proving an existing final judgment on the merits (!) without fraud or collusion (!). McNely v. Board of Education (1956) 9 Ill.2d 143, 137 N.E.2d 63,68. The burden is upon the party who relies upon res judicata or collateral estoppel to establish its applicability. Chicago Historical Society v. Paschen (1956) 9 Ill.2d 378, 137 N.E. 2d 832, 834. McNealy v. Board of Education, supra.

4. The Petition to Vacate contains sufficient well-pleaded facts to show that the Bank perpetrated fraud upon the Court beginning with false and misleading statements in its complaint filed September 22, 1982. The record shows that the March 14, 1984 order was obtained by a stipulation between the Bank and George F. Dick III (attached to a then-proposed order) and was not a final judgment on the merits. A fraudulent or collusive suit can not be used as a bar. McNely v. Board of Education, supra. Freasman v. Smith (1942) 379 Ill. 79, 37 N.E.2d 367, 370-71.

5. Certainly, anything courts may have said since the March 14, 1984 stipulation and order of dismissal---has been based on the presumption that the Bank's action had not

been a fraudulent or collusive suit.

6. As to the underlying action, the Court sitting in chancery may grant the relief Helen A. Dick seeks without setting aside the Bank's agreement which limited George F. Dick III's liability. At paragraph 19 of her uncontroverted affidavit (the last exhibit to her Petition to Vacate) Helen A. Dick deposed: "No court has ever reviewed the settlement agreement between the Bank and George F. Dick III." The Settlement Agreement (Exhibit "A" to the Petition to Vacate) shows on its face that it limits George III's liability---but does not pertain to the liability of the Bank.

7. Speaking further as to the underlying action, allegations as to the Bank's duties to Helen A. Dick are set forth at paragraphs 1 through 7 of the section "CONCLUSIONS AND PRAYER FOR RELIEF" which begins at page 16 of her Petition to Vacate. The Court may compel the Bank to make the prayed-for accountings (most of which a prudent trustee would have made when it accepted the duties as trustee) and may subsequently enter a money judgment against the Bank and in favor of Helen A. Dick---simply crediting the Bank with the $40 thousand it did collect from George F. Dick III for Helen A. Dick's benefit.

II.

LIMITATIONS DO NOT APPLY WHERE THE ORDER IS CHALLENGED AS HAVING BEEN OBTAINED BY FRAUD---AND LIMITATIONS DO NOT APPLY TO EXPRESS ACTIVE TRUSTS.

1. Concealing or misrepresenting facts to the Court constitutes fraud upon the Court and sufficient reason for vacating an order, even after the term at which it was entered. Nash v. Park Castles (1943) 384 Ill. 68, 50 N.E.2d 725, 729. The Petition to Vacate shows that the March 14, 1984 order is challenged as having been obtained by fraud upon the Court, including but not limited to false and misleading statements in the Bank's complaint.

2. The statute of limitations does not begin to run against an express active trust until the trust is repudiated

or the trust relation between the parties comes to an end. Piff v. Berresheim (1950) 405 Ill. 617, 92 N.E.2d 113, 118, cited in Dick v. Peoples Mid-Illinois Corp. (4th Dist. 1990) 195 Ill.App.3d 654, 552 N.E.2d 385, 388, wherein the Appellate Court stated that the trust established by George F. Dick, Jr.'s will would not terminate until the death of Eleanor D. Lyon and that the trust had not been repudiated.

4. [sic] Taking well-pleaded facts as true, paragraph 2 at page 1 of the verified petition states that the Bank is still trustee of Althea M. Dick Trust f/b/o Helen A. Dick and that until shortly after the January 12, 1992 death of Eleanor D. Lyon, the Bank was trustee of the George F. Dick, Jr. Trust (of which Helen A. Dick was/is a beneficiary, as pleaded at paragraph 1 of the Petition to Vacate).

III.

AS TO HELEN A. DICK'S STANDING TO BRING THIS ACTION

1. Nichols' Illinois Civil Practice, at § 4628 (pertaining to parties to a petition for relief from a judgment or order) quotes the opinion in Wing v. Little (1915) 267 Ill. 20, 107 N.E. 875, 877, wherein the Illinois Supreme Court stated:

> "The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions. Nor is relief against a fraudulent judgment necessarily limited to the parties to the record or their privies. Whenever a judgment or a decree is procured through the fraud of either of the parties or by collusion of both, for the purpose of defrauding some third party, such third party may attack the judgment or decree in a collateral proceeding and show the fraud or collusion by which the judgment or decree was obtained. (Citations omitted.) A collusive judgment is open to attack whenever and wherever it may come in conflict with the rights or interests of third persons, and fraud is not a thing that can stand, even when robed in a judgment. (Citation omitted)."

2. Concealing or misrepresenting facts to the Court constitutes fraud upon the Court and sufficient reason for vacating an order. Nash v. Park Castles (1943) 384 Ill. 68, 50 N.E.2d 725, 729. There are sufficient well-pleaded facts in the Petition to Vacate to show that the Bank's complaint (filed September 22, 1982) contained false and misleading statements.

3. The Appellate Court stated as recently as March 1993 that Helen A. Dick is entitled to her day in court to allege facts relating to a breach of fiduciary duty by the Bank. Dick v. Peoples Mid-Illinois Corp. (4th Dist. 1993) 242 Ill.App.3d 297, 609 N.E.2d 997, 1002. Taking all well-pleaded facts as true, the Bank's fraud upon the Court clearly was a breach of its duty to trust beneficiary Helen A. Dick who (as the record shows) was not independently represented by an attorney. As set forth in Section II above, only in this action (and before this judge) could Helen A. Dick show fraud upon the Court (and her damages therefrom).

IV.

MOTION FOR SANCTIONS UNDER SUPREME COURT RULE 137

1. The Bank raised the issue of res judicata, even though (as set forth in Section II above) the record shows that it is not possible for the Bank to meet the burden of proving that the Petition to Vacate is barred by any prior judgment.

2. The Bank raised the issue of limitations. However, the statute of limitations is an affirmative defense that cannot be raised by a section 2-619 motion unless it affirmatively appears from the pleading attacked that the cause of action is time-barred. St. Louis v. Rockwell Graphic Systems (1st Dist. 1991) 220 Ill.App.3d 704, 581 N.E.2d 93, 94. As set forth within Section III above, the Petition to Vacate shows on its face that this action is not barred by time.

3. Taking all well-pleaded facts as true, the Petition to Vacate shows, among other things, that the Bank's 1982 pleading was a "sham" pleading, designed to defraud the

Court (and trust beneficiary Helen A. Dick). The Trustee Bank cannot in good faith expect the Court, sitting in chancery, to find that a trust beneficiary does not have standing to petition the Court to vacate any order obtained in a suit where the trustee's pleading contained false and misleading statements.

4. The Bank's Motion for Involuntary Dismissal is not well grounded in fact or warranted by existing law, thus it is appropriate for the Court to impose sanctions against the Bank under Supreme Court Rule 137.

5. The Bank's Motion for Sanctions is, in itself, a frivolous motion---where, taking the well-pleaded facts of the verified Petition to Vacate as true, the Bank's 1982 action was a fraudulent and collusive suit. Freasman v. Smith (1942) 379 Ill. 79, 39 N.E.2d 367, 371.

WHEREFORE, petitioner Helen A. Dick prays:

A. For an order compelling Peoples Bank to file a verified response or answer within a reasonable period of time, and without filing any further motions attacking Helen A. Dick's pleading.

B. For such other and further, or different, relief as the Court may deem just and proper.

Respectfully submitted,
HELEN A. DICK

Helen A. Dick
3323 13th Ave. Court
Moline, IL 61265
Phone: (309) 762-7014

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, et al., Defendants.	)	

VERIFIED PETITION FOR CHANGE OF VENUE TO WOODFORD COUNTY

NOW COMES HELEN A. DICK, petitioner and trust beneficiary pro se, and respectfully states that it can prevent injustice and unfairness and will be in keeping with applicable statute(s) and case law for the above-entitled cause to be transferred to Eureka, Woodford County, Illinois, so that all matters related to her "Petition to Vacate Order(s) Obtained by Fraud Upon the Court" (filed January 11, 1994) can be heard by the Honorable Richard M. Baner, the non-McLean County judge to whom this cause was assigned in November 1982 and who ruled on substantial issues in said cause from the time it was assigned to him until the main case was dismissed by the Trustee Bank's stipulation and Judge Baner's Order (both filed March 14, 1984). Petitioner further states:

1. The record shows that Judge Baner ruled on substantial issues in this cause as, for example, when ruling (Order entered March 2, 1984) on the Bank's Motion for Partial

Summary Judgment (filed January 24, 1984) and George F. Dick III's Motion for Summary Judgment (filed January 20, 1984). A change to another judge is not available where a judge has, as Judge Baner has, ruled on substantial issues in the case. 735 ILCS 5/2-1001.

2. Proceedings for relief from final orders or judgments (735 ILCS 5/2-1401, formerly ch. 110, par. 2-1401) are not within the purview of the statute providing for substitution of a judge. Nichols Illinois Civil Practice, sec. 2442. Proceedings for Relief from Final Orders or Judgments.

> A person seeking to vacate a judgment of dismissal more than 30 days after entry is required to bring a motion for such relief before the judge who rendered the original judgment. Eldorado Towers v. Chicago Title and Trust Co. (1st Dist. 1989) 182 Ill.App.3d 263, 537 N.E.2d 1042, 1045. Lofendo v. Ozog (1st Dist. 1983) 118 Ill.App.3d 237, 454 N.E.2d 806, 811.
>
> [A petition to vacate] should be heard by the same judge who rendered the original judgment which the petition collaterally attacks, since he would have better knowledge as to whether the new facts alleged would have prevented rendition of the judgment attacked. People v. Heidelberg (3d Dist. 1975) 33 Ill.App.3d 574, 338 N. E.2d 56, 64.
>
> The trial judge who heard the cause in the first instance presumably would know whether the facts sought to be presented in the supplementary proceeding are facts which were unknown to the court at the time judgment was entered and which, if known, would have precluded the entry of judgment. A reasonable construction of section 72 of the Civil Practice Act [now 735 ILCS 5/2-1401] to the extent it provides that all errors in fact, committed in the proceedings of any court of record, and which, by the common law, could have been corrected by the writ of error coram nobis, "may be corrected by the court

in which the error was committed," is that the motion in the nature of a writ of error coram nobis should be presented to the same judge who rendered the original judgment. People v. Sheppard (1950) 405 Ill. 79, 90 N.E.2d 78, 80-81. See also Kilbride v. Kilbride (1st Dist. 1965) 64 Ill.App.2d 355, 212 N.E.2d 252, 255-256, quoting from the Illinois Supreme Court decision in Chapman v. North American Life Ins. Co. (1920) 292 Ill. 179, 126 N.E. 732.

3. There are sufficient well-pleaded facts in the Petition to Vacate (filed January 11, 1994) to show, taking such facts as true, that the pleading filed by the Bank's counsel on September 22, 1982, contained false and misleading statements.

4. The record shows that throughout the Bank's action, Helen A. Dick depended upon the Trustee Bank and its counsel to fully and fairly represent her interests and was not independently represented by an attorney. Any judge other than Judge Baner would, understandably, rely on the Bank's counsel's representation(s) as to what facts were or were not before Judge Baner during the Bank's 1982 action. (This would be true even if Helen A. Dick were to obtain the services of an attorney to represent her, since such attorney would not have been present during the Bank's said action.)

5. Judge Baner certainly would know better than any other judge could know (e.g. by his memory being refreshed as to what facts were before him when he made certain notations in the Record Sheet) what was actually before him when he made various findings during the Bank's action.

6. Eureka is close enough to Bloomington that a change of venue to Woodford County would not create a hardship for any party and, in fact, at least one proceeding in the Bank's action (the pre-trial conference of February 22, 1984) took place before Judge Baner in Eureka.

For the foregoing reasons, Helen A. Dick prays for a

change of venue and for all related matters to be heard by the Honorable Richard M. Baner, who is still sitting as a judge of the Eleventh Judicial Circuit and to whom this cause was assigned in November 1982.

HELEN A. DICK
Petitioner, pro se

State of Illinois
County of Rock Island ss.

Helen A. Dick, being duly sworn, deposes and says that she is the petitioner in the above-entitled cause; that she personally prepared the foregoing petition by her subscribed and knows its contents, and that the contents are true in substance and in fact.

HELEN A DICK

Signed and subscribed to before me at
Moline, Rock Island County, Illinois,
This 22nd day of March, 1994.

CRISTINA D. ARDUSER (SEAL)
Notary Public

Helen A. Dick
3323 - 13th Ave. Court
Moline, IL 61265
March 23, 1994

The Honorable Charles Witte
McLean County Law & Justice Center
104 W. Front Street
Bloomington, IL 61701

Re: Assignment of judge
in Peoples Bank v. George F. Dick III et al.,
McLean County No. 82-CH-124

Your Honor:

It is my understanding that it was determined in November 1982 that the above-entitled cause ought to be heard by a non-McLean County judge, thus it was assigned to Judge Baner.

I enclose a copy of my "Verified Petition for Change of Venue to Woodford County" (and affidavit of service) which was filed today (March 23, 1994) in the above-entitled cause.

If this petition may be considered without a hearing, please inform me of your decision. If a hearing is necessary, please advise me as to who to contact in order to schedule same.

Thank you.

Very truly yours,
HELEN A. DICK

cc: John E Fick
Samuels, Miller, Schroeder,
Jackson & Sly
P. O. Box 1400
Decatur, IL 62525

SAMUELS, MILLER, SCHROEDER, JACKSON & SLY
406 FIRST OF AMERICA CENTER
250 NORTH WATER STREET
P.O. BOX 1400
DECATUR, ILLINOIS 62525
(217) 429-4325
FAX 217-425-6313

E. WAYNE SCHROEDER
JERALD E. JACKSON
NICHOLAS J. NEIERS
JAMES W. ALLING
JOHN E. FICK
GUY E. WILLIAMS
JOHN S. COBB
MARK E. JACKSON
KEITH W. CASTEEL
DARRELL A. WOOLUMS
JOHN E. SANNER
EDWARD Q. COSTA
JAMES T. JACKSON
RHONDA L RICHARDS
J. RICHARD CAMPBELL
KRISTEN E. SUPINIE

ARTHUR, ILLINOIS 61911
131B SOUTH VINE
(217) 543-3403

WILLIAM M. RICE
OF COUNSEL

THOMAS S. SLY
OF COUNSEL

CHARLES C. LeFORGEE
1867-1951

THOMAS W. SAMUELS
1886-1989

CARL R. MILLER
1904-1986

ESTABLISHED 1888

June 20, 1994

Judge Richard Baner
Woodford County Courthouse
115 North Main Street
Eureka, Illinois 61530

In Re: Peoples Bank v. Dick
Case No. 82-CH-124

[A copy of this letter, is at Vol. XII, C-4027 where it was enclosed with Judge Baner's June 21, 1994 correspondence to Judge Witte. This letter was also before Judge Witte as Exhibit "U" to a Memo filed Aug. 31, 1994.]

Dear Judge Baner:

I write you on the assumption that the issues created by the filings herein by Helen A. Dick, including in part Helen A. Dick's objections to the Order of dismissal entered in this case in March of 1984 as allegedly tainted by fraud together with Peoples Bank's Motion directed thereto will be resolved by you as the Judge presiding in this cause at the time of those preceedings.

My further understanding is there are now pending before you our Motion directed to the Petition as well as a Motion for Partial Summary Judgment of Helen A. Dick which we received June 9, 1994.

We are also filing a Motion seeking to be permitted to filing instanter of our response to the 81 Requests to Admit of Helen A. Dick.

If my assumptions as to these matters are correct, I request hearing times on any of the following dates subject to availability on your schedule for dispositive hearings of these matters: June 27 through June 30, inclusive; July 5 through 8, inclusive.

I assume the hearing will be at the location where you will find it most convenient to refer to all of the files and other matters which will be referenced in the arguments to be presented to you. This would appear to be Bloomington inasmuch as the files of other cases in litigation which have involved the same issues as those in this case are part of the Clerk's files in Bloomington.

Peoples Bank expects references to other litigation filed in McLean County will be a part of its argument and anticipates the Court will be requested to take notice of such matters.

If the above proposed dates are not available on your calendar, we would appreciate it if you would have your office notify the parties of dates that might be more convenient for you. While it is difficult to estimate the length of time that might be required for such a hearing, I would anticipate that a hearing in excess of 90 minutes duration but less than two hours might be sufficient.

Thank you for your courtesy in this matter.

Very truly yours,

SAMUELS, MILLER, SCHROEDER
JACKSON & SLY

JOHN E. FICK
By: JOHN E. FICK

JEF:sl
cc: Ms. Helen A. Dick

ELEVENTH CIRCUIT COURT OF ILLINOIS

RICHARD M. BANER
CIRCUIT JUDGE

WOODFORD COUNTY
COURTHOUSE
115 N. MAIN ST – RM. 301
EUREKA, ILLINOIS 61530
(309) 467-2131

June 21, 1994

Honorable Charles W. Witte
Law & Justice Center
104 West Front Street
Bloomington, IL 61701

Re: Case No. 82 CH 124

Dear Judge Witte:

It is my understanding that since this case has been re-opened since my assignment to McLean County has terminated, it is in the process of reassignment to a new judge. In the meantime, I have received the enclosed correspondence from Attorney Fick. By copy of this letter, I am suggesting that he contact either your office or that of the newly-assigned judge, whichever is appropriate.

Very truly yours,

RICHARD M. BANER
Richard M. Baner
Circuit Judge

jk
Enclosure
cc: Court file
John E. Fick

SAMUELS, MILLER, SCHROEDER, JACKSON & SLY
406 FIRST OF AMERICA CENTER
250 NORTH WATER STREET
P.O. BOX 1400
DECATUR, ILLINOIS 62525
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1867-1951

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1886-1989

CARL R. MILLER
1904-1986

ESTABLISHED 1888

June 23, 1994

The Honorable Charles W. Witte
Law & Justice Center
104 West Front Street
Bloomington, Illinois 61701

In Re: Peoples Bank v. Dick
Case No. 82-CH-124

[Vol. XII, C-4030]

Dear Judge Witte:

I have a copy of correspondence from Judge Baner to you of June 21, 1994. Until I received that correspondence I did not realize that Judge Baner would not be the Judge who would be assigned to consider the issues that are pending in this case based on a Petition filed therein by Helen A. Dick.

If you would have your office inform me as to the Judge who will be presiding in this matter I will attempt to contact his office and obtain a hearing date for the matters which are now pending.

Thank you for your courtesy in connection with this matter.

Very truly yours,

SAMUELS, MILLER, SCHROEDER,
JACKSON & SLY

JOHN E. FICK
BY: JOHN E. FICK

JEF:sl
cc: Helen A. Dick

ELEVENTH CIRCUIT COURT OF ILLINOIS

RICHARD M. BANER
CIRCUIT JUDGE

WOODFORD COUNTY
COURTHOUSE
115 N. MAIN ST – RM. 301
EUREKA, ILLINOIS 61530
(309) 467-2131

June 24, 1994

Ms. Helen A. Dick
3323 13th Ave. Court
Moline, IL 61265

Re: McLean County Case M. 82 CH 124

Dear Ms. Dick:

The enclosed material was received by my office today. As my secretary informed you yesterday, you should contact the McLean County Circuit Clerk if you desire activity in the file. This case is no longer assigned to me; and therefore, I am returning your material to you unopened. It is my understanding that the file is now assigned to McLean County Circuit Judge Charles Witte, and you should handle filings with the McLean County Circuit Clerk.

Very truly yours,

RICHARD M. BANER
Circuit Judge

jk
Enclosure
cc: McLean Circuit Clerk

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, et al., Defendants.	)	

MEMO

(in support of Helen A. Dick's petition filed March 23, 1994, for change of venue to Woodford County)

1. The central facts of a petition to vacate (i.e. Helen A Dick's verified Petition to Vacate filed January 11, 1994) are those facts which allege that the order or judgment was obtained by fraud. Manning v. Meier (4th Dist. 1983) 114 Ill.App.3d 835, 449 N.E.2d 560, 564. A petition to vacate must not only be filed in the action in which the judgment or order was entered, it must be brought before the same judge who rendered the original judgment. Lofendo v. Ozog (1st Dist. 1983) 118 Ill.App.3d 237, 454 N.E.2d 806, 810-811. Certainly, nothing a court (trial or reviewing) may have said in any other cause and/or since Judge Baner entered the March 14, 1984 order of dismissal in this cause is relevant to the issue of whether that (or any previous) order was obtained by fraud.

2. Judge Baner would know better than another judge

could know---why he entered the February 22, 1984 order (Exhibit "R" attached hereto) finding that Helen A. Dick was not a party to any of the counts then remaining (Counts I, II, III and IV)[1/] and that she could not submit factual matters or present argument.

3. Judge Baner would know better than another judge could know---that there was never any issue before him as to whether the Bank was authorized (by will or by statute) to settle, compromise and/or abandon claims---and that the Stipulation between the Bank and George F. Dick III (Exhibit "S" attached hereto) concealed, among other things:

(a) That neither the July 1953 will of George F. Dick, Jr. nor the January 1969 will of Althea M. Dick (Exhibits "B" and "C" to the Petition to Vacate filed January 11, 1994) contain any term or provision permitting the settlement, compromise or abandonment of claims---and that the Trusts and Trustees Act does not apply to said wills executed prior to October 1, 1973 (760 ILCS 5/3, formerly Ill.Rev.Stat. ch. 17, sec. 3).

(b) That the Trustee Bank was not independent of George F. Dick III because (as pleaded at paragraph 1 on page 5 of the verified Petition to Vacate filed January 11, 1994) defendant George F. Dick III was still a director of the holding company (Peoples Mid-Illinois Corp.) which owns the Bank and governs its affairs.

(c) That the Bank and said holding company had interests in conflict with interests of the trust beneficiaries as to the Bank's Counts I and II---because (as set forth at paragraphs 6 and 7 on page 8 of said

1/ The court had dismissed the Bank's Counts V and VII (Record Sheet entry of January 18, 1983). The Bank had dismissed Helen A. Dick out of the main case by voluntarily dismissing its count VI (Record Sheet entry of February 15, 1984), a count which had prayed for discovery from her and others.

verified Petition to Vacate) at all times after September 19, 1955, the Bank and (after its formation) the holding company had actual notice of the Will of George F. Dick, Jr., and thus were liable for each improper transfer, payment and/or delivery of shares. Notice of a will gives a corporation the duty to inquire into the will and is a "death wound" as to any transfer, payment and/or delivery of shares that is violative of the will's terms and provisions. Seymour v. National Biscuit Co. (3d Cir. 1939) 107 F.2d 58, 62. Daily v. Universal Oil Products Co. (N.D. Ill. 1947) 76 F.Supp. 349, 371. Attached hereto are copies of the face and back of a stock certificate (Exhibit "E") and a page of the Stock Holders Ledger used by the Bank and by Peoples Mid-Illinois Corp. (Exhibit "D"). Said exhibits show that the Bank and (after its formation) Peoples Mid-Illinois Corp. effected the transfers, payments and/or deliveries of shares set forth and/or implied in Counts I and II of the Bank's pleading---despite having had continuing notice since September 19, 1944 of the Will of George F. Dick, Jr.

4. Judge Baner would know better than another judge could know---that the foregoing information was not before the Court when he signed the proposed order attached to the aforesaid March 14, 1984 Stipulation (Exhibit "S" attached above) or when he entered the March 2, 1984 [order] as to summary judgment regarding some issues. Without such information before the Court, Judge Baner had no way to know that his March 2, 1984 finding that the 1959 transfer of 80 shares of the Bank to George F. Dick III was violative of the provisions of the Will of George F. Dick, Jr.---and his finding that George III should account for all shares for the period of March 31, 1959 to the October 10, 1976 death of Althea M. Dick---were findings against the interest of the Bank (and Peoples Mid-Illinois Corp.) for having made improper transfers, payments and deliveries of shares to George III during that period.

5. Judge Baner would know better than another judge could know---that without the foregoing information before the Court when he entered the March 14, 1984 order of dismissal (or, for that matter, when he entered the aforesaid order as to partial summary judgment) there was no reason for the Court to suspect the Trustee Bank of any disloyalty and, thus, no reason for the Court to search the Bank's pleading for false allegations, including but not limited to:

(a) The false alegation (at paragraph 2 of all counts of the Bank's pleading) that George F. Dick III became testamentary trustee of property of the Estate of George F. Dick, Jr. beginning in July 1956.

In truth and in fact, the Will of George F. Dick, Jr. (Exhibit "B" to the Petition to Vacate filed January 11, 1994) shows that George Jr. intended his estate to remain open until after the death of Althea M. Dick---and said Will gave Althea "full possession and sole management" of all her late husband's property for as long as she lived, with the power to sell any and all such property and to consume the proceeds of any sale.

By said false allegations, the Bank concealed (among other things) that none of the property was to be in trust during Althea's lifetime---that George F. Dick III did not have a vested interest in any property during Althea's lifetime---and that George III had failed to file a final report in his capacity as "the remaining Executor" after Althea died in October 1976. An honest report, if he had filed one, would have revealed that he had become constructive trustee/trustee de son tort by improperly taking possession and control of estate property during Althea's lifetime.

(b) The false allegation (at paragraph 5 of the Bank's Count I, which was a paragraph common to all counts of the Bank's pleading) that George III became Chairman of the Bank's Board of Directors in 1976--and

the false allegation (at paragraph 8 of the Bank's Count I) that in 1967 "there was a 30 for 1 split" of the Bank's stock.

In truth and in fact, George F. Dick III had become Chairman of the Bank's Board of Directors by 1967---and what took place in 1967 was neither an arm's length matter nor a mere "split." As set forth more fully hereinafter, George III personally proposed and recommended what was actually a combined stock dividend and split; the Bank improperly permitted him to vote 80 shares which, under terms and provisions of George Jr.'s will, ought to have been in Althea's "full possession and sole management"; and the Bank improperly transferred, paid and/or delivered to George III all benefits/advantages resulting from said combined stock dividend and split ---all despite the Bank's having had actual notice of the Will of George F. Dick, Jr.

A copy of George F. Dick III's "RESOLUTION TO BE ADOPTED BY BOARD" is attached hereto (Exhibit "I"), together with a copy of the Minutes of the June 12, 1967 Board of Directors Meeting signed by George III as Chairman of the Board (Exhibit "J") and a copy of the Minutes of the July 24, 1967 Special Stockholders Meeting showing, among other things, a roll call of the stock and that George III moved for the unanimous adoption of his resolution (Exhibit "K"). Copies of the face and back of the Stock Holders Ledger page showing shares registered in George III's name are attached hereto (Exhibit "T") and show that in 1967 the Bank gave George III all advantages/ benefits resulting from the 80 shares that the Bank had improperly transferred to him in 1959.

(c) The false allegation (at paragraph 8 of the Bank's Count I, which was a paragraph common also to Counts II and IV of the Bank's pleading) that in June 1972 all shares of the Bank were "exchanged" for

shares of People Mid-Illinois Corporation.

In truth and in fact, the Stock Holders Ledger pages attached hereinabove (Exhibits "D" and "T") bear the following words:

"PBB SHARES CONVERTED TO
PEOPLES MID-ILLINOIS CORP."

---and said Ledger pages thus show that all shares of the Capital Stock of the Peoples Bank of Bloomington which rightfully belonged to the Estate of George F. Dick, Jr. were converted in 1972 to the use and beneficial enjoyment of said Peoples Mid-Illinois Corp.---a conversion in which Attorney George F. Dick III participated in while President of the Bank and Chairman of the Bank's Board of Directors (and while he was constructive trustee/trustee de son tort of 2,400 shares of the Capital Stock of the Peoples Bank of Bloomington which rightfully belonged to the Estate of George F. Dick, Jr.).

6. Judge Baner would know better than another judge could know---the extent of the collusion between the Bank and George F. Dick III (e.g. when obtaining the March 14, 1984 order of dismissal; when obtaining the March 2, 1984 order as to summary judgment regarding some issues; and when the Bank filed its pleading containing the aforesaid false allegations).

7. Judge Baner would know better than another judge could know---how little Helen A. Dick knew (e.g. as to procedure) in 1984---and what a "cheap shot" it was for the Bank (her trustee!) to have entered a dismissal Stipulation with George F. Dick III and dismissed its action over nonlawyer Helen A. Dick's objection (Record Sheet entry of March 14, 1984) with the result that the Stipulation and order of dismissal was binding upon her---but could not be challenged in any action other than this cause or by any means except a petition to vacate the Order of dismissal.

8. Transfer of the case to Woodford County, to be heard by Judge Baner, clearly would not create a hardship for the Bank. Attached hereto (Exhibit "U") is a copy of a June 20, 1994 letter from one of the Bank's attorneys to Judge Baner ---in which said attorney stated his assumption that the matter would be heard by Judge Baner, at whichever location (Eureka or Bloomington) would be most convenient for Judge Baner to refer to what the Bank's attorney described as "all of the files and other matters."

9. Helen A. Dick respectfully suggests that the only file to be transferred is the file of this cause, McLean County 82-CH-124.

Respectfully submitted,
HELEN A. DICK

Helen A. Dick, pro se
3323 - 13th Ave. Court
Moline, IL 61265
Phone: (309) 762-7014

BEST AVAILABLE COPY

EXHIBIT "D"

STOCK HOLDERS LEDGER

SHEET NO. _____

Give Check to G. F. Dick III

(m-)

NAME Althea M. Dick, Life Tenant Under Will of Geo. F. Dick, Jr., Deceased.

ADDRESS 116 S. Mercer Ave., Bloomington, Illinois.

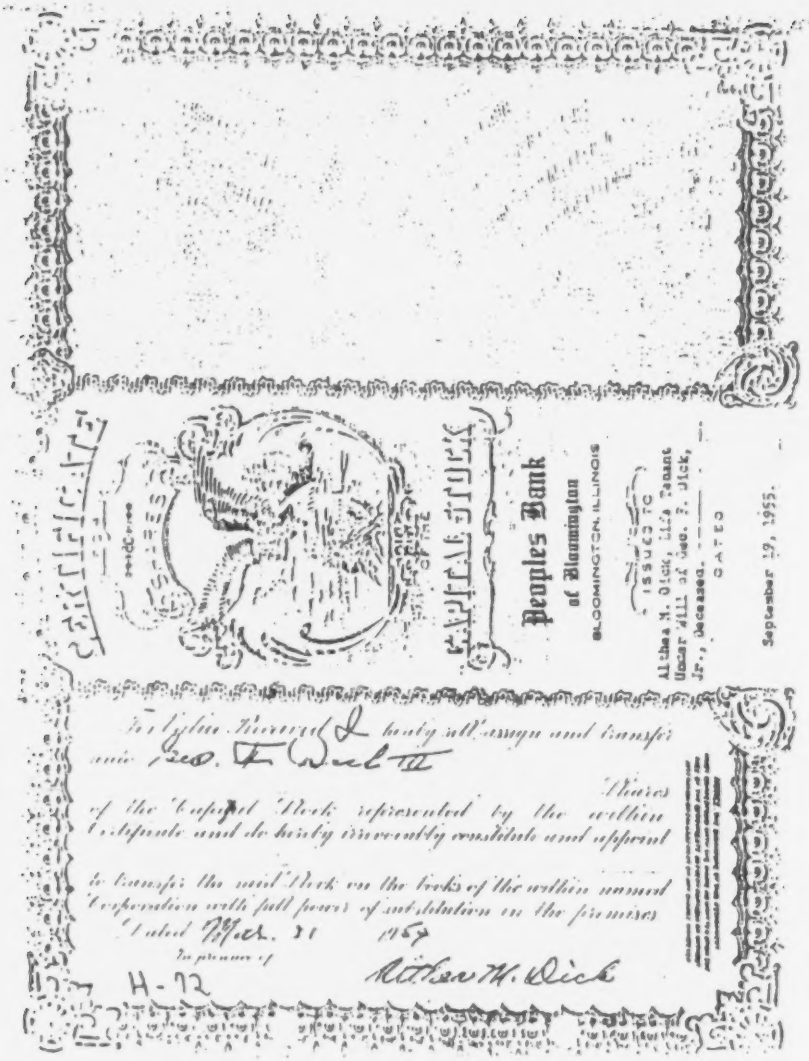
DATE ISSUED OR SURRENDERED	TRANSFERRED FROM OR TO	CERTIFICATE NUMBER		RECORD OF SHARES		
	NAME	ISSUED	SURRENDERED	SHARES ISSUED	SHARES SURRENDERED	BALANCE
Sept 19 1955	Geo. F. Dick, Jr.	634		80.		
" "	"	635		11.		91.
Mar. 31 1959	Geo. F. Dick, III.		634		80	11
[illegible]					11	None
[illegible]		828		330		330
6 30 72	PBB SHARES CONVERTED TO PEOPLES BID-ILLINOIS CORP.		828		330	None
7 3 72		25		330		330
10 26 72	Helen Dick		25		330	None

332-34-8012

Page-A-121

EXHIBIT "E"

BEST AVAIL


Peoples Bank
of Bloomington
BLOOMINGTON, ILLINOIS
ISSUED TO
Althea M. Dick, Life Tenant
Under Will of Geo. F. Dick,
Jr., Deceased.
DATED
September 19, 1955.
For value received I hereby sell assign and transfer
unto Geo. F. Dick III
Shares
of the Capital Stock represented by the within
Certificate and do hereby irrevocably constitute and appoint
to transfer the said Stock on the books of the within named
Corporation with full power of substitution in the premises
Dated Sept. 21 1959
In presence of
Althea M. Dick
H-72

ABLE COPY

RESOLUTION TO BE ADOPTED BY BOARD

WHEREAS, the Board of Directors of Peoples Bank of Bloomington, at its regular meeting held Monday, June 12, 1967, adopted the following resolution:

"WHEREAS the Board of Directors believes it is for the best interest of the Bank to increase the Capital Stock of the Bank from $200,000.00 to $600,000.00 by the transfer of $200,000.00 of accumulated Surplus to Capital Stock and the transfer of $200,000.00 of accumulated Undivided Profits to Capital Stock, and,

WHEREAS the Board of Directors also believes it is for the best interest of the Bank to reduce the par value of each share of stock from $100.00 par value to $10.00 par value,"

THEREFORE, BE IT RESOLVED: That the Board of Directors proposes and recommends to stockholders an amendment to the Charter of the Bank increasing the Capital Stock of the Bank from $200,000.00 to $600,000.00 consisting of 60,000 shares of the par value of $10.00 each; and that the increase of Capital Stock be accomplished by the transfer of $200,000.00 from the accumulated Surplus Account to the Capital Stock Account and the transfer of $200,000.00 from the Undivided Profit Account, and that the increase in shares of stock be accomplished by a stock split to reduce the par value to $10.00 par value thus increasing the number of shares to 60,000.

BE IT FURTHER RESOLVED: That subject to the approval by the Stockholders of the increase in the Bank's Capital Stock and the exchange of certificate [sic] for stock of $10.00 par value the Board of Directors authorizes distribution to Stockholders on August 1, 1967 of the new $10.00 par value stock upon the basis of 30 new shares for each old share.

BE IT FURTHER RESOLVED: That the Cashier of the Peoples Bank of Bloomington be directed to call a Special

Meeting of the Stockholders of said Bank be held at its Banking House on Monday, July 24, 1967 at 2:30 P.M. D.S.T. for the purpose of submitting the above resolution and recommendation to the Stockholders, and that the Cashier of the Bank be directed to enclose with the call for the special meeting a copy of these resolutions, that the Cashier be directed to furnish each stockholder entitled to notice of the meeting, a form to be used by him in nominating his proxy to direct the proxy to vote "for" or "against" the proposed resolution.

BE IT FURTHER RESOLVED: That the books for transfer of ownership of stock be closed for transfer at the close of business on June 22, 1967 for determining those stockholders entitled to notice of the said special meeting, and entitled to vote their shares at said meeting.

Minutes of the Board of Directors
of the Peoples Bank of Bloomington

June 12, 1967

The Board of Directors of the Peoples Bank of Bloomington met at the office of the Bank on Monday, June 12, 1967 at 2:30 p.m., the following Directors being present: Geo. F. Dick III, Robert S. McCormick, Sherman Whitmer, Clinton B. Soper, Harvey A. Hart, Richard T. Dunn, and Ben F. Hiltabrand. The meeting was called to order by Geo. F. Dick III who presided.

The minutes of the meeting of May 8, 1967 were read and ordered approved.

The following items and reports were individually considered in detail, discussed, and in each instance on motion made and seconded, were unanimously approved.

The report of condition of the Bank as of May 31, 1967 as attached hereto.

The May 1967 notes, being Nos. 7273- 7477, incl.

The regular monthly report of the Trust Department containing a list of the new investments in the various accounts as well as the overdrafts in this department.

The expense account for May 1967 amounting to $104,602.20.

The overdrafts for May 1967 as shown on the comparative statement.

EXHIBIT "J"

The following loans to officers and employees of the Bank:

Dale S Hanson	$298.62	Due	Nov. 12, 1968
Bob Snow	522.48	"	May 29, 1968
Dan S. Dugan	200.00	"	Nov. 31, 1967
W. P. Scott	500.00	"	July 2, 1967
Ruth E. Darnink	150.00	"	Sept. 6, 1967

The following transactions made during May 1967 with regard to our investment portfolio:

Tax Warrant Purchased

$225,000.00 School Dist. No. 87, McLean Co., Ill., Educ. Fund, 3%

Proceeding to other business, the Board unanimously named Mrs. Harriett Gosnell to the Board of Trustees of the Employees Retirement & Thrift Fund of the Peoples Bank of Bloomington, thus filling the vacancy on that Board created by the death of Miss Margaret Brian.

Effective June 1, 1967 the salary of Rhodes Crown was increased by unanimous consent to $9,000.00 per Annum.

Mr. Dick recommended to the Board that a Special Meeting of the stockholders be called for the purpose of approving a stock dividend and stock split of Peoples Bank of Bloomington stock. His proposal would reduce the par value of each share to $10.00, increase the number of shares to 60,000, and transfer $200,000 from each of the accumulated Surplus account and the Undivided Profit account to the Capital Stock account. After a period of discussion the Board voted unanimously to adopt resolutions to accomplish these purposes, and a copy of such resolution in full is

attached hereto and made a part of these minutes.

No further business appearing, on motion the Board adjourned.

GEO. F. DICK III
Chairman

HARVEY A. HART
Secretary

Special Stockholders Meeting
of the Peoples Bank of Bloomington
July 24, 1967

Pursuant to notice, a Special meeting of the stockholders of the Peoples Bank of Bloomington was held at the office of the Bank on Monday, July 24, 1967. The meeting was called to order at 2:30 p.m. by Geo. F. Dick III, and was organized by the election of Richard T. Dunn as Chairman, and Harvey A. Hart as Secretary of the stockholders meeting.

The Secretary read to the assembled stockholders resolutions as adopted by the Board of Directors at their regular meeting on June 12, 1967. These resolutions recommended an amendment to the charter of the Bank, increasing the Capital Account to $600,000.00, increasing the number of authorized and issued shares of stock to 60,000, and reducing the par value of each share from $100.00 to $10.00.

Thee followed a roll call of the stock which disclosed that the stock was represented as follows:

Stockholders Present in Person
or Represented by Duly Authorized
Attorneys in Fact:

W. R. Bach	25
Raymond C. Baldwin Estate	20
Geo. F. Dick III	90
Richard T. Dunn	18
Jerry D. Gummere	10
Harvey A. Hart	22
Dr. G. E. Hartenbower	10

EXHIBIT "K"

Ben F. Hiltabrand	10
Albert H. Hoopes	5
Robert S McCormick	20
Thomas Gene Paxton or Betty Field Paxton, J. T.	5
Peoples Bank, Tr. U/A Julia Johnson	10
Peoples Bank, Tr. U/A LeRoy G. Whitmer	40
Peoples Bank, Tr. U/W LeRoy G. Witmer	36
Clinton B. Soper	10
Harry R. Stevens	5
Harry H. Tenney	10
Sherman Whitmer	40

Stockholders Represented by Proxies

Gertrude T. Aldrich	40
Paul G. Anderson & Constance M. Anderson, J. T.	2
Ashe & Co.	16
Marjorie Dick Baker	35
Marjorie D. Baker & Warren Q. Baker, J. T.	3
Royal Jay Burtrum	2
Ellwood Bieneman	10
Charlotte Burr	25
Barbara Butzirus	2
Joanne S. Butzirus	3
Pruda L. Campbell & Arthur M. Campbell, J. T.	10
Henry W. Capen	12
Harold E. Curry	5
Hugh Darling	10
Althea M. Dick	61
Helen Dick	6
Citizens Nat'l Bank of Decatur, Carl R. Dick, Peggy Dick, Co-Trs. Est. of Carl R. Dick, deceased	68
Harry K. Diehl	20
Lena M. Ellsworth	8
Freer & Co.	20
Mary Ellen Grassfield	6

Lena M. Harp	88
Harry B. Harwood	10
F. Marle Haughawout & Mary L Haughawout, J. T.	3
J. B. Havens	15
George K. Hinshaw	10
Grace M. Holton	20
Harry B. Howells, Henry C. White, Carlton F Schultz Trs. Est. Belle F. Taylor	100
Elna Hunt	1
Timothy R. Ives	17
Herbert M. Livingston & Hannah O. Livingston, J. T.	5
Kleanor D. Lyon	7
Chester D. Marquis & Kathleen M. Marquis, J. T.	14
Florence S. Marquis	10
Franklin W. Marquis	8
Franklin W. Marquis & Margaret A. Marquis, J. T.	6
Vincent B. Marquis & Beulah G. Marquis, J. T.	16
Ada L. Meekar	3
Orin E. Meeker	7
Helen Morrison	42
Katharine Garretson Myers	37
Laura F. Northrup	10
W. Guthrie Piarsel & Daltye C. Piersel, J. T.	11
Dr. John L. Probasco	10
Lewis W. Probasco	10
Charlotte L. Probasco	20
Margradell A. Riddle	21
Helen A. Ritchie	20
Josephine Rodgers	6
Clara A. Rost	2
Theo A. Rost	8
Adlai Rust	30
Ina M. Rust	12
Mae B. Schalla, Tr. U/W Eda M. Capen	46
Jeannette Schultz	36
Caroline H. Sendelbach	6
Daniel Hammet Senseney	2

Maude Senseney	5
Leah N. Siebert	1
Ardell R. Smith	10
Jean W. Snyder	4
Edgar M. Stevenson	60
Letitia E. Stevenson	36
Catherine C. Tate, Life Tenant	25
Lela Beckman Thompson	40
Arthur W. Tompkins	10
Trs. Employees Retirement & Thrift Fund, Peoples Bank of Bl.	12
Caroline Davidson Wagner & Janet Wagner Kinne, J. T.	81
Robert M. Wakefield	10
Helen B. Wells	14
John H. Wettaw & Ruth G Wettaw J. T.	2
Mildred E. Whitmer	72
Geneve T. Whitmer	1
Charlotte Wilmeth	50
Denton B. Woodward	10
Dorothy Dick Woodward	35
Walter A. Yoder	10

There being 1,907 shares represented of the 2,000 shares outstanding, the Chairman declared the meeting open for the transaction of business.

On motion made by Mr. Geo. F. Dick and seconded by Mr. Ben F. Hiltaband the following Resolution was unanimously adopted:

(a.) The Capital Stock of the Bank shall be increased from $200,000.00 to $600,000.00 by the transfer of $200,000.00 of Surplus Account to the Capital Stock Account and the transfer of $200,000,00 of Undivided Profits Account to the Capital Stock Account.

(b) That the Par Value of each share of Capital Stock of the Bank be decreased from $100.00 per share to $10.00 per share and that the number of shares of Capital Stock be increased from 2,000 shares presently issued of the par value of $100.00 per share to 60,000 shares of the par value of $10.00 per share, all to be effective at the close of business on August 1, 1967.

(c) Effective at the close of business on August 1, 1967 each certificate of stock outstanding in the hands of stockholders be exchanged for certificates of stock of the par value of $10.00 per share upon the basis of 30 new shares for each old share so that there will be 60,000 shares of Capital Stock of the par value of $10.00 per share.

(d) The Board of Directors and the Officers be authorized to do, or cause to be done, any and all things necessary or convenient to carry into effect the purpose of this resolution, including the preparation, execution and filing with the proper authorities of any and all papers, certificates and documents required by law or convenient to effectuate the purpose of this resolution.

Following the favorable vote on the above resolution Mr. William J. Bach complemented the Board of Directors of the Bank for their part in initiating such action.

No further business appearing, on motion the meeting was adjourned.

RICHARD T. DUNN
Chairman

HARVEY A. HART
Secretary

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, et al., Defendants.	)	

ORDER

1. February 15, 1984 defendant Helen A. Dick files Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment and Affidavit in Opposition to George F. Dick III's Motion for Summary Judgment.

2. Objection by George F. Dick, III to standing of Helen A. Dick to argue Motions for Summary Judgment on Counts I, II, III and IV of the Complaint entitled Construction of Testamentary Trusts herein filed by the original plaintiff.

3. Arguments heard.

4. The Court finds Helen A. Dick is not a party to the causes of action alleged by the original plaintiff in said Counts I, II, III and IV, and in the absence of agreement of the parties to said counts may not independently submit factual matters or present argument relative to pending Summary Judgment Motions.

ENTERED: February 21, 1984

RICHARD M. BANER
Richard M. Baner
Circuit Judge

EXHIBIT "R"

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, et al., Defendants.	)	

STIPULATION

NOW COME PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and the Will of Althea M. Dick, deceased, plaintiff-counterdefendant, by Samuels, Miller, Schroeder, Jackson & Sly, its attorneys, and GEORGE F. DICK III, defendant-counterplaintiff, by Albert H. Hoopes and Tenney, Tietz & Heavner, his attorneys, and hereby stipulate that the claims and causes of actions and counterclaims of said parties now pending in this cause have been fully compromised and settled and, therefore, this cause should be dismissed as to these parties with prejudice.

PEOPLES BANK OF BLOOMINGTON,
as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased

By SAMUELS, MILLER, SCHROEDER,

EXHIBIT "S"

JACKSON & SLY

By JOHN E. FICK
Its Attorneys

GEORGE F. DICK III, by his attorneys

ALBERT H. HOOPES
(Albert H. Hoopes)

TENNEY, TIETZ & HEAVNER

By CHRISTOPHER TIETZ

* * * *

ORDER

THIS CAUSE comes on for hearing on the Stipulation of PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Wills of George F. Dick, Jr., deceased, and Althea M. Dick, deceased, by Samuels, Miller, Schroeder, Jackson & Sly, its attorneys, and GEORGE F. DICK III, by Albert H. Hoopes and Tenney, Tietz & Heavner, his attorneys. The Court is fully informed in the premises; therefore,

IT IS ORDERED that the above and foregoing cause as to all pending counts involving causes of actions, claims or counterclaims by and between the parties to the said Stipulation be dismissed with prejudice, each said party to pay its or his own costs; costs are paid.

DATED this 14th day of MARCH, 1984.

ENTER:

RICHARD M. BANER
Judge

BEST AVAILABLE COPY

EXHIBIT "L"

SHEET NO. _____

STOCK HOLDERS LEDGER

NAME Dick Geo F. III

ADDRESS ~~3rd E. Washington~~

4-1-60 BLOOMINGTON, IL

DATE ISSUED OR SURRENDERED	TRANSFERRED FROM OR TO NAME	CERTIFICATE NUMBERS ISSUED	CERTIFICATE NUMBERS SURRENDERED	RECORD OF SHARES SHARES ISSUED	RECORD OF SHARES SHARES SURRENDERED	RECORD OF SHARES BALANCE
JUN 1 19[illegible]	Geo Folsom Sr.	199 [illegible]		1		1
Jan 10 19[illegible]	Geo Folsom Sr.	574		9		10
Mar. 31 1959	Althea M. Dick	661		80		90
AUG 1 19[illegible]					90	None
FEB 3 19[illegible]		829		100		
AUG 3 19[illegible]		830		2400		2500
6 30 72	PBB SHARES CONVERTED TO PEOPLES MID-ILLINOIS CORP.		829		100	
			830		2400	None
7 3 72		119		2500		2500
4 17 78	3 for 1 stock split	343		5000		7500
3 5 80	(1,000 Shrs. to Delmar Rowe)		343		5,000	
3 5 80		565		1,000		
3 5 80		566		1,000		
3 5 80		567		1,000		
3 5 80		568		1,000		5,500

267-20-7868

(OVER)

BEST AVAILABLE COPY

STOCK HOLDERS LEDGER

SHEET NO. _____

NAME George F. Dick, III

ADDRESS

DATE ISSUED OR SURRENDERED MONTH	DAY	YEAR	TRANSFERRED FROM OR TO NAME	CERTIFICATE NUMBERS ISSUED	SURRENDERED	RECORD OF SHARES SHARES ISSUED	SHARES SURRENDERED	BALANCE
1	21	81						6,500
1	21	81	To PBB Co.(Richard T. Dunn)		565		1,000	5,500
1/21		81		583		620		6,120
2/	19/	81	To Betty H. Dick (Transfer)		566		1,000	
2	19	81	To Betty H. Dick (Transfer)		567		1,000	4,120
5	30	85	4 for 1 stock split	824		12,360		16,480
7	20	87	Re-registered as Trust Account		119		2,500	
					568		1,000	
					583		620	
					824		12,360	-0-

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JAMES T. JACKSON
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OF COUNSEL

THOMAS S. SLY
OF COUNSEL

CHARLES C. LeFORGEE
1867-1951

THOMAS W. SAMUELS
1886-1989

CARL R. MILLER
1904-1986

ESTABLISHED 1888

June 20, 1994

Judge Richard Baner
Woodford County Courthouse
115 North Main Street
Eureka, Illinois 61530

In Re: Peoples Bank v. Dick
Case No. 82-CH-124

EXHIBIT "U"

Dear Judge Baner:

I write you on the assumption that the issues created by the filings herein by Helen A. Dick, including in part Helen A. Dick's objections to the Order of dismissal entered in this case in March of 1984 as allegedly tainted by fraud together with Peoples Bank's Motion directed thereto will be resolved by you as the Judge presiding in this cause at the time of those proceedings.

My further understanding is there are now pending before you our Motion directed to the Petition as well as a Motion for Partial Summary Judgment of Helen A. Dick which we received June 9, 1994.

We are also filing a Motion seeking to be permitted to filing instanter of our response to the 81 Requests to Admit of Helen A. Dick.

If my assumptions as to these matters are correct, I request hearing times on any of the following dates subject to availability on your schedule for dispositive hearings of these matters: June 27 through June 30, inclusive, July 5 through 8, inclusive.

I assume the hearing will be at the location where you will find it most convenient to refer to all of the files and other matters which will be referenced in the arguments to be presented to you. This would appear to be Bloomington inasmuch as the files of other cases in litigation which have involved the same issues as those in this case are part of the Clerk's files in Bloomington.

Peoples Bank expects references to other litigation filed in McLean County will be a part of its argument and anticipates the Court will be requested to take notice of such matters.

If the above proposed dates are not available on your calendar, we would appreciate it if you would have your office notify the parties of dates that might be more convenient for you. While it is difficult to estimate the length of time that might be required for such a hearing, I would anticipate that a hearing in excess of 90 minutes duration but less than two hours might be sufficient.

Thank you for your courtesy in this matter.

Very truly yours,

SAMUELS, MILLER, SCHROEDER,
JACKSON & SLY

JOHN E. FICK
By: JOHN E. FICK

JEF:sl
cc: Ms. Helen A. Dick

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, et al., Defendants.	)	

AS TO BENEFICIARY HELEN A. DICK'S WRITTEN OBJECTION
TO THE TRUSTEE BANK'S PROPOSED ORDER

NOW COMES Petitioner, Beneficiary Helen A. Dick, pro se, and hereby states the following:

1. On September 13, 1994 I sent the original of my written objection (dated September 12, 1994) to the Trustee Bank's proposed judgment order---to the Hon. Charles W. Witte, via Express Mail guaranteed to be delivered before 12 o'clock noon on September 13, 1994.

2. On or about September 20, 1994, I learned from an employee in the Clerk's office that my aforesaid September 12, 1994 correspondence to Judge Witte had not yet been filed; I previously had been told that beginning September 5, 1994 Judge Witte was scheduled to begin three weeks of hearing asbestos cases.

3. Attached hereto is a copy of my said objection (dated September 12, 1994) together with a copy of the Express Mail receipt and a copy of the Domestic Return Receipt

showing that said item of mail was delivered on September 14, 1994 and signed for by Dale Froman, an employee in the mail room of the Law & Justice Center.

4. As a matter of convenience to the Court (and a matter of courtesy to the Trustee Bank's attorney, Mr. Fick,---I also attach a copy of Attorney Fick's September 8, 1994 letter to Judge Witte and a copy of Mr. Fick's proposed order---so that the proposed order I've objected to is also in the file as a matter of record.

HELEN A. DICK
Helen A. Dick, pro se

Helen A. Dick
3323 - 13th Ave. Court
Moline, IL 61265
Phone: (309) 762-7014

Helen A. Dick
3323 - 13th Ave. Court
Moline, IL 61265

The Honorable Charles W. Witte
Circuit Judge
McLean County Law and Justice Center
104 W. Front St.
Bloomington, IL 61701

Re: Peoples Bank v. Dick et al.
McLean County No. 82-CH-124

Your Honor:

Having been reared by an attorney (my adoptive father and natural grandfather, George F. Dick, Jr.), I have great respect, even some affection, for "the system."

My recollection is that near the close of the September 1, 1984 proceedings, Mr. Fick mentioned sanctions and you said that you were "not going to reach that issue at this point." You then stated that the Bank had not filed a separate motion for attorney fees---and you directed the Bank to prepare and file a separate motion for attorney fees, to which I could respond, to be heard some other time.

> (The record shows that the Bank's Motion for Involuntary Dismissal was filed March 7, 1994 and, indeed, that the Bank had not filed a separate motion for attorney fees.)

My understanding and recollection was that I would be

given seven (7) days to approve a proposed order as to form (you offered 21 days; I said 7 days from the date of my receiving it would be sufficient)---and that was the only matter to which any 7 day limitation would apply.

An item of Certified Mail from Mr. Fick, which I picked up Monday morning, September 12, 1994 (a copy of the Delivery Notice Reminder is attached hereto) contained only a copy of Mr. Fick's September 8, 1994 letter to you---and a copy of the Bank's proposed order. In short, if the Bank filed a separate motion for attorney fees, it did not serve me with a copy.

I respectfully bring your attention to the fact that the proposed order is not in accordance with your aforesaid September 1, 1994 instructions---and is false and fraudulent (in some other respects as well) and is intended to deceive the Court. In my opinion, it is an insult to you and to your office for such a thing to be filed with you.

If your Honor were to sign the order proposed by the Bank (e.g. if presuming I had no objection to the thing and/or if glancing through it too quickly---which, quite frankly, I don't believe you would make the mistake of doing) such an order would be one more order entered in this appalling case due to the Bank's having perpetrated fraud upon the Court as to my beneficial interests.

Certainly, the March 2, 1984 Order as to partial summary judgment was based on the Court's presumption that the Bank's September 22, 1982 pleading was at least honest and on the Court's presumption that all necessary parties were before the Court. And certainly even the March 14, 1994 order of dismissal must have been based on the presumption that the Bank's pleading had been honest and the presumption that all necessary parties were before the Court.

In general, Illinois recognizes two classifications of

> void judgments subject to collateral attack. There are judgments which are void because the trial court lacked jurisdiction over the person or subject matter and (emphasis added) there are judgments which are void because they are procured through fraud, City of Chicago v. Central Nat. Bank (1st Dist. 1985) 134 Ill.App.3d 22, 479 N.E.2d 1040, 1044.
>
> [It is a] well established rule that a void judgment or decree is subject to collateral attack at any time and that a court has inherent authority to expunge from its records void acts. City of Chicago, supra, at 1043-1044.

I respectfully bring your attention to Illinois Rules of Professional Conduct, Rule 1.2 Scope of Representation, which reads, in pertinent part:

> (d) A lawyer shall not *** assist a client, in conduct that the lawyer knows is *** fraudulent [.]

Rule 3.3 Conduct Before a tribunal reads, in pertinent part:

> (a) In appearing in a professional capacity before a tribunal, a lawyer shall not:
>
> (1) make a statement of material fact to a tribunal which the lawyer knows or reasonably should know is false;
>
> (2) fail to disclose to a tribunal a material fact known to the lawyer when disclosure is necessary to avoid assisting a *** fraudulent act by the client;
>
> (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.

Certainly, a lawyer is "before" the Court as to anything he represents after filing his appearance in any given case---including but not limited to when he is physically present in a courtroom and when he files documents with the Court.

Specifically as the Rule 3.3 (a) (3) above, failure to disclose legal authority to the tribunal: During the September 1, 1994 proceedings, you certainly knew that the nature of the action filed by the Bank was "Will Construction" (page 1 of the Record Sheet). You certainly also knew, as set forth at paragraph 2 of my supporting Memo filed August 31, 1994 and the February 22, 1984 Order attached thereto (Exhibit "R") that after February 15, 1984, I was no longer a party to any of the counts remaining in the Bank's action and thus was not "before" the Court.

If not before, at least when Your Honor stated that lawsuits are often settled prior to trial and that settlement is encouraged---as long as all appropriate parties are before the Court ----------Mr. Fick certainly knew that I had failed to disclose/cite authority showing that I was a necessary and indispensable party to the action for Will Construction. Pursuant to the aforesaid Rule 3.3 (a) (3) above, Mr. Fick ought to have cited authority such as the following:

> On a bill for the construction of a will, all persons who are interested in the subject matter of the suit and whose interests will necessarily be affected by the construction of the will and the decree rendered in accordance therewith are not only proper, but necessary and indispensable parties. *** The general rule applies not only because persons interested should be afforded an opportunity to assert or defend their rights, but also to enable the court to render a decree by which they are concluded, and finally to adjudicate the controversy. *** The construction of a will without the presence before the court of parties to be

> affected by the construction would be a mere academic deliverance---a sort of moot court opinion. 96 C.J.S. Wills, sec. 1088 at p. 765.

In re Richmand's Estate (1st Dist. 1953) I Ill.App.2d 310, 117 N.E.2d 583, 587, the reviewing court found that a beneficiary is a necessary party in a case to construe a will. Moreover, the court said, "If there was a mistake of fact in the chancery case, that should be corrected in an appropriate proceeding."

> A necessary party is one who has such an interest in the matter in controversy that it cannot be determined without either affecting that interest or leaving the interest of those who are before the court in a situation that might be embarrassing and inconsistent with equity. *** When omission of necessary parties is noted the ordinary procedure is for the court to stop further proceedings. Georgeoff v. Spencer (1948) 400 Ill. 300, 79 N.E. 2d 596, 507.

Without quoting all that is set forth at pages 1004-1007 of Oglesby v. Springfield Marine Bank (1944) 385 Ill. 414, 52 N.E.2d 1000, 1004-1007, I will limit myself to the following quotation which sets forth a principle I believe Mr. Fick ought to have brought Your Honor's attention to on September 1, 1994:

> [Necessary parties] are entitled to be present and to participate (emphasis added) in the litigation of all questions affecting such interest. *** The decree is binding only on those beneficiaries who were parties to the suit.

In my "Petition to Vacate Order(s) Obtained by [the Bank's Fraud Upon the Court", I pleaded (at page 6, Sec. E, "As to Count I of the Pleading Filed by the Bank"):

> "Said Count I was a count for construction of the will of George F. Dick, Jr. Helen A. Dick was not a party to said count."

At page 11 of my aforesaid pleading, I averred the same thing as to the Bank's Count II. My said pleading is verified and the truth of my said averments is plain on the face of the Bank's September 22, 1982 pleading (that is, the Bank's false pleading)!

In my said Petition to Vacate at page 4, Sec. E, "As to the Title of the Pleading Filed by the Bank"---I had pleaded:

> 3. The Bank did not reveal that Helen A. Dick was a necessary and indispensable party to each count for will construction and/or that any finding against her interests would be moot as to her where she was not a party to such counts.

Judge Baner would know better than another judge could know---whether the Bank revealed to him that I was a necessary and indispensable party to the Bank's action. And, as set forth at paragraph 2 of my Memo (filed August 31, 1994), Judge Baner would know better than another judge could know---why he entered the February 22, 1984 order (Exhibit "R" attached to said Memo) finding that I was not a party to any of the counts remaining (Counts I, II, III and IV) and that I could not submit factual matters or present argument.

I believe Your Honor intends to decide matters fairly---and, thus, I believe that if Mr. Fick had disclosed legal authority to the Court showing that I was a necessary and indispensable party to the Bank's action----------that you would have adhered to the doctrine of stare decisis and, following the statute and case law I had cited in my Petition of Change of Venue and Memo-------that you would have granted my

said petition so that the matter would again be before Judge Baner, the judge who had this file before him for two years (Record Sheet entries of April 15, 1983 and February 14, 1984).

Prior to your summary (towards the end of the September 1, 1994 proceedings) of your experience on the bench---I had presumed that the reason you refused to return this case to Judge Baner was that you specialized in hearing cases involving (alleged) breaches of fiduciary duty. As set forth at paragraph 8 of my August 31, 1994 Memo and Exhibit "U" attached thereto, the Bank had written to Judge Baner on the assumption that the matter would be heard by him---in Eureka or Bloomington.

I respectfully bring Your Honor's attention to the fact that courts have the power to vacate orders on the Court's own motion (sua sponte), and that such a procedure would be both appropriate and the most efficient use of the Court's time ---as to any and all orders resulting from the September 1, 1994 proceedings, during which the Court was sitting in chancery. I respectfully refer Your Honor to Freasman v. Smith (1942) 379 Ill. 79, 39 N.E.2d 367, 370.

Very truly yours,

HELEN A. DICK

cc: Attorney John E. Fick

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1867-1951

THOMAS W. SAMUELS
1886-1989

CARL R. MILLER
1904-1986

ESTABLISHED 1888

September 8, 1994

The Honorable Charles W. Witte
Circuit Judge
Law & Justice Center
104 West Front Street
Bloomington, Illinois 61701

[Vol.XII, C-4073 as an Exhibit to the foregoing correspondence; the original (file-stamped Sept. 26, 1994) is at Vol. XII, C-4082]

In Re: Peoples Bank vs. Dick, et al.
McLean County Case No. 82-CH-124

Dear Judge Witte:

We submit herewith a proposed Judgment Order growing out of the matters heard by you at the hearing in this cause on September 1, 1994.

A copy of this Order is being furnished to Helen A. Dick by Certified Mail, Return Receipt Requested with the expectation that if she does not contact the court within seven days of receipt you may assume she has no objection to the form of the Order.

Under separate cover we will furnish the Court and Helen A. Dick the Verified Statement of Costs and Attorneys Fees in support of Peoples Bank's Rule 137 Motion, again furnishing Helen A. Dick by Certified Mail a copy in order that she may react as she sees fit within the time allowed by the Court.

Very truly yours,

SAMUELS, MILLER, SCHROEDER, JACKSON & SLY

JOHN E. FICK
By: JOHN E. FICK

JEF:sl
Enclosures
cc: Helen A. Dick

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, et al., Defendants.	)	

JUDGMENT ORDER

On September 1, 1994, Peoples Bank of Bloomington, Plaintiff/Respondent herein appears by its counsel of record, John E. Fick, and its Trust Officer and personal representative, Owen Mair. There also appears pro se Helen A. Dick, Defendant/Petitioner. Whereupon hearings are held on pending matters of the parties. The first matter heard is the Verified Petition for Change of Venue to Woodford County of Helen A. Dick, Defendant/Petitioner. The Court considers said Verified Petition for Change of Venue and also the Memo of Helen A. Dick submitted in support thereof, together with the arguments of the parties, and being fully informed in the premises the Court FINDS that the Verified Petition for Change of Venue to Woodford County of Helen A. Dick, Defendant/Petitioner, should be and is denied.

WHEREFORE, the Verified Petition for Change of Venue to Woodford County of Helen A. Dick, Defendant/

(This proposed/unsigned order was attached to the Bank's foregoing correspondence)

Petitioner is denied

Next, on the 1st day of September, 1994, there comes on for hearing the Motion for Involuntary Dismissal - 735 ILCS 5/2-619(a)(4)(5) and Motion for Attorneys Fees - Supreme Court Rule 137 of Peoples Bank of Bloomington, Plaintiff/Respondent, and the Court considers said Motions together with Petitioner Helen A. Dick's written Opposition to Peoples Bank's Motion for Involuntary Dismissal as well as Petitioner Helen A. Dick's Motion for Sanctions under Supreme Court Rule 137 and further, the Court considers all the argument of the parties and being fully informed in the premises FINDS that the Motion for Involuntary Dismissal - 735 ILCS 5/2-619(a)(4)(5) of Peoples Bank should be and is allowed,

WHEREFORE, the Motion for Involuntary Dismissal - 735 ILCS 5/2-619(a)(4)(5) of Peoples Bank, Plaintiff/Respondent, is allowed, and the Verified Petition of Helen A. Dick, Defendant/Petitioner, to Vacate Order(s) Obtained by Fraud Upon the Court is hereby denied and judgment is entered herein in favor of Peoples Bank of Bloomington, Plaintiff/Respondent, and against Helen A. Dick, Defendant/Petitioner.

This Court retains jurisdiction limited to a consideration of the Peoples Bank of Bloomington's Motion for Attorneys Fees - Supreme Court Rule 137. The Court directs Peoples Bank to support its Motion by documentation of any cost and attorneys fees claimed reasonably to have been incurred by Peoples Bank in defending against the Petitions of Helen A. Dick filed herein. Within seven (7) days of receipt of such documentation from Peoples Bank, Helen A. Dick, Defendant/Petitioner, may make any response she sees fit. Thereafter, the Court will determine whether further hearing should be held or it may find that the issues made in said Motion of Peoples Bank for relief under Rule 137 should be determined on the record then and there established by the parties, and shall act accordingly.

DATED: September _____, 1994

ENTER:

_____

CHARLES W. WITTE, Circuit Judge

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, et al., Defendants.	)	

MOTION FOR REHEARING

Pursuant to the Code of Civil Procedure 735 ILCS 5/2-1203, the Petitioner (Beneficiary Helen A. Dick), pro se, hereby moves the Court for a rehearing and for the Court to vacate and set aside any and all orders (oral, entered on the Record Sheet and/ or separately) entered in this cause as a result of the September 1, 1994 proceedings before the Honorable W. Charles Witte--- and to enter an order allowing the Verified Petition for Change of Venue to Woodford County (filed March 23, 1994), thus returning the matter to the Honorable Richard M. Baner. As grounds therefor, Helen A. Dick states the following:

1. A copy of the transcript of the aforesaid September 1, 1994 proceedings is Exhibit "Z" attached hereto. As Judge Witte noted (Ex. "Z" p. 6 at 9-20) and the Record Sheet shows: Judge Knecht excused himself (Record Sheet entry of November 1, 1982) and Judge Campbell disqualified himself

(Exhibit "Z" (Sept. 1, 1994 transcript) is not reproduced in this Appendix.)

(Record Sheet entry of April 14, 1983) before this case was assigned to Judge Baner (Record Sheet entry of April 15, 1983). At the time the matter was assigned to Judge Baner ---the usual policy/custom after two McLean County judges had disqualified/recused themselves--was for the case to be assigned to a non-McLean County judge on the logical theory that whenever two McLean County judges had recused/ disqualified themselves as to any given case---it was presumed that any McLean County judge's impartiality might reasonably be questioned as to the case.

2. Judge Baner (of Woodford County) had this file before him for about two years (Record Sheet entries of April 15, 1983 and February 14, 1984) and ruled on substantial issues in the Trustee Bank's action. A copy of the February 22, 1984 Order (as to Beneficiary Helen A. Dick's not being a party to any of the counts then remaining in the Bank's action) is Ex. "R" attached at paragraph 2 of Helen A. Dick's Memo filed August 31, 1994. As the Record Sheet shows, Judge Baner entered an Order as to (partial) summary judgment on March 2, 1984. He entered the Order of dismissal on March 14, 1984.

3. Where this case was filed by a large McLean County bank against that bank's former President, George F. Dick III, who was also an attorney (as pleaded at paragraph 5 on page 3 of the Trustee Bank's pleading filed herein on September 22, 1982)---it is quite likely that Judge Baner has some independent recollections of the case. No other judge could have any such advantage.

4. Where, as set forth above, Judge Baner had this file before him for about two years, his having the file before him again probably would refresh his memory as to matters which do not appear in the record. No other judge could have that advantage.

5. One such matter about which Judge Baner's memory might be refreshed (by his having the file before him again) is the conference call between Judge Baner, Mr. Fick and George F. Dick III's attorney---during which said attorneys

had asked Judge Baner if the Court had a right to review a settlement agreement and Judge Baner had told said attorneys that the Court did not have such a right. During the September 1, 1994 proceedings (Ex. "Z" p. 30 at 8-22) Helen A. Dick said that Judge Baner had spoken of said conference call on March 14, 1984, the day he entered the Order of dismissal. The Record Sheet entry does not contain any reference to said conference call:

> Cause comes on for hearing on B.T. Counsel for plaintiff and for defendant present dismissal stipulation re pending issues. Beneficiary Helen A. Dick objects. Argument heard re settlement without beneficiary's approval. Authorities reviewed and Court offers to consider (emphasis added) approval of settlement if (emphasis added) requested by plaintifff trustee. Not requested. Case dismissed per Stipulation (emphasis added) over objection of Helen A. Dick.

However, Judge Baner would be likely to remember that there was such a call (no other judge could have such knowledge) and such information would be relevant to the Trustee Bank's having entered a settlement [without authority so to do, as pleaded at paragraphs 13 and 14 on page 3 of Beneficiary Helen A. Dick's Petition to Vacate Order(s) Obtained by Fraud upon the Court (filed January 11, 1994) and set forth at paragraph 3 (a) of her Memo filed August 31, 1994] after having been told by Judge Baner that the Court did not have a right to review settlement agreements.

6. Judge Baner might also remember that when he offered to consider approval of settlement---he said it would take him about three days to go over all the documents (e.g. the documents that had been marked as Exhibits during the pre-trial conference, as shown by the Record Sheet entry for February 22, 1984) and that he told the Trustee Bank that he was willing to do so.

7. WHICH PARTY IS MORE LIKELY TO BE ASSIST-

ING THE COURT TO CONSIDER THE MATTER IMPARTIALLY---AS COURTS MUST DO? Beneficiary Helen A. Dick, who petitioned for this case to be returned to Judge Baner (so that, as the saying goes, the chips could fall where they may)---or the Trustee Bank who urged that the matter be considered by a judge (i.e. Judge Witte) other than Judge Baner who, as set forth above, had this file before him for about two years and clearly would---as Judge Witte commented on September 1, 1994, "have had a better handle on some of the issues" (Ex. "Z" p. 13 at 20 & 21).

8. The record and the Record Sheet entries show that the settlement agreement was not filed with the Court. As set forth in the uncontroverted Affidavit of Helen A. Dick supporting, and the attached as the last Exhibit to, her verified (verification is at page 21 of said pleading) Petition to Vacate Order(s) Obtained by Fraud upon the Court (filed January 11, 1994):

> 19. No court has ever reviewed the settlement agreement between the Bank and George F. Dick III.
>
> 20. No court has ever said that it was proper for the Bank to permit George III to obtain and/or to retain advantages he had obtained for himself while he was in possession and control of property of the Estate of George F. Dick, Jr., during the lifetime of Althea M. Dick.

Clearly, no court could consider whether or not to approve a Trustee's settlement without having the agreement before the court for review.

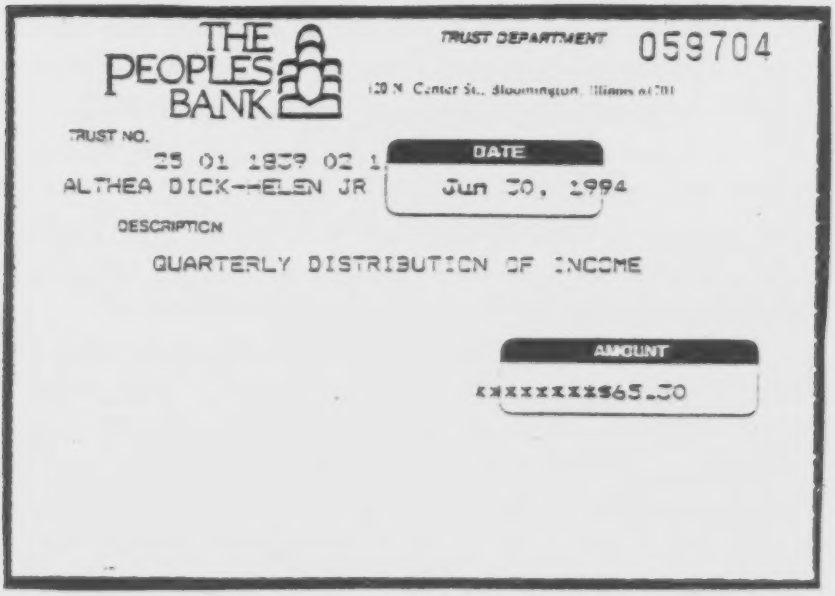
9. The above-quoted Record Sheet entry for March 14, 1984 specifically states that the case was dismissed per Stipulation. (A copy of said Stipulation is Exhibit "S" to Helen A. Dick's Petition to Vacate (filed January 11, 1994) at page 3:

13. The Bank did not bring attention to the fact that neither the 1953 will of George F. Dick, Jr. nor the 1969 will of Althea M. Dick (copies of which are attached hereto, respectively, as Exhibits "B" and "C") contain any term or provision authorizing the settlement, compromise or abandonment of claims.

14. The Bank did not reveal that there was and is no such statutory authority applicable to said wills, both of which were executed prior to October 1, 1973 (760 ILCS 5/3 et seq., formerly Ill.Rev.Stat. ch. 17, sec. 1653 et seq.).

If a trustee exceeds his powers, his acts are a nullity, 90 C. J. S. Trusts, §246 at p. 220 (Ex. "Z" p. 33 at 24 through p. 34 at 2).

10. It is interesting to note that the trust relationship between Beneficiary Helen A. Dick and the Trustee Bank is still an ongoing relationship. Attached hereto is evidence of a recent (i.e. June 30, 1994) distribution to Helen A. Dick by her Trustee (the Bank) from the Althea M. Dick trust f/b/o said Helen A. Dick.


THE PEOPLES BANK

TRUST DEPARTMENT 059704

120 N. Center St., Bloomington, Illinois 61701

TRUST NO.
25 01 1809 02 1

DATE
Jun 30, 1994

ALTHEA DICK--HELEN JR

DESCRIPTION
QUARTERLY DISTRIBUTION OF INCOME

AMOUNT
**********$65.30

BEST AVAILABLE COPY

The Trustee Bank is continuing to breach its duty of undivided loyalty to Helen A. Dick---even by resisting her efforts to have this case returned to Judge Baner who (as set forth above and in the Petition for Change of Venue filed March 23, 1994 and supporting Memo filed August 31, 1994, both of which are incorporated herein) clearly knows this case better than another judge could.

11. As the reviewing court said of the trustees in Johnson v. Sarver, it is not compulsory or mandatory that a trustee accept the appointment made by a testator but, having accepted, a trustee must maintain a high level of conduct and owes undivided loyalty to those whose property he controls. The law does not contemplate that a beneficiary of a trust must set in motion the processes of a court of equity in order to obtain what he is entitled to. Johnson v. Sarver (2d Dist. 1953) 350 Ill.App. 565, 113 N.E.2d 578, 584.

12. As agents of Beneficiary Helen A. Dick's Trustee (Peoples Bank of Bloomington), Attorneys John E. Fick and Owen J. Mair had and have a duty of undivided loyalty to said beneficiary. Although Mr. Fick did not specifically refer to Mr. Mair as an attorney when he introduced him to the Court and referred to Mr. Mair as being with him representing the Bank (Ex. "Z" p. 3 at 11-13), a court may judicially notice such matters as who its Officers are.

13. Both of said attorneys certainly knew, as law school graduates, that most cases involve criminal matters and that, of civil cases, only a small percentage involve fiduciary relationships and duties. There probably are many judges who have never had a case before them involving questions as to a Trustee's duties to a beneficiary and even more judges who have never considered a case involving questions as to Will Construction (Record Sheet, page 1 at "Nature of Case"). Certainly, very few judges have ever had a file before them involving questions as to a fiduciary's having obtained orders by perpetrating fraud upon the Court. The instant case involves all of the above---and more

14. Included in the Preamble to the Illinois Rules of

Professional Conduct are the following statements:

> The practice of law is a public trust. Lawyers are the trustees of the system by which citizens resolve disputes among themselves *** and determine their relative rights and responsibilities toward each other and their government. ***
>
> ***Lawyers seeking to conform their conduct to the requirements of these rules should look to the values (emphasis added) described in this preamble for guidance in interpreting the difficult issues which may arise under the rules.
>
> *** [I]t is the duty of all lawyers to seek resolution of disputes at the least cost in time,. expense and trauma to all parties and to the courts (emphasis added).

Where lawyers are, as set forth above, "trustees of the system," certainly they ought not to be collecting fees for working against the Court's need (and society's need) to promote public confidence in the integrity and impartiality of the judiciary. As set forth more fully hereinafter, early in the September 1, 1994 proceedings, Mr. Fick made at least two statements of material fact or law to Judge Witte which he certainly knew were false. Helen A. Dick respectfully suggests that one or both of said attorneys (Mr. Fick and Mr. Mair) probably had asked around and knew that Judge Witte did not customarily hear cases regarding fiduciary relationships and duties.

15. When Judge Witte referred to his experience on the bench as his having heard serious felony cases for 6 years and adjusting, beginning in January, to having been assigned some civil matters in the form of 45 or so asbestos cases (Ex. "Z" p. 11 at 7 through p. 12 at 9)---if not before---either (or both) of said attorneys ought to have disclosed some authority to the Court (which Beneficiary Helen A.

Dick had not done) as to fiduciary matters, such as the following:

> A person having duty, created by his undertaking, to act primarily for another's benefit (emphasis added) in matters connected with such undertaking. A fiduciary "includes such relationships as executor, administrator, trustee, and guardian." ABA Code of Judicial Conduct, Canon 3C(3)(b). A lawyer is also in a fiduciary relationship with the client.
>
> * * * * * * * * * * *
>
> A person or institution who manages money or property for another and who must exercise a standard of care in such management activity imposed by law or contract; e.g. executor of estate; receiver in bankruptcy; trustee. A trustee, for example, possesses a fiduciary responsibility to the beneficiaries of the trust to follow the terms of the trust and applicable state law. A breach of fiduciary responsibility would make the trustee liable to the beneficiaries for any damage caused by such breach. Blacks Law Dictionary (6th Ed. 1991) at Fiduciary.

In a 1982 Fourth District opinion, the reviewing court quoted Justice Cardozo:

> A trustee's primary obligation is that of loyalty to his beneficiary. No better summary has been set forth than that of Justice Cardozo in Meinhard v. Salmon (citation omitted): "Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the

> rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court." Britton v. Winger (4th Dist. 1982) 110 Ill.App.3d 230, 442 N.E.2d 264, 266.

In Sauvage v. Gallaway, the Fourth District Appellate Court stated that the duty of loyalty is more intense in the trust relationship than in any other fiduciary relationship---and stated (citing Am Jur and a United States Supreme Court decision): "It is a fundamental and wholesome provision of the law which requires a trustee must act in good faith in the administration of his trust, and that requirement means that he must act honestly and with finest and undivided loyalty to his trust ***." Sauvage v. Gallaway (1946) 329 Ill.App. 38, 66 N.E.2d 740, 743.

16. Certainly, it is because of the Trustee's superior advantage over the beneficiary that laches and limitations do not apply to an action against a trustee.

> It is a settled principle that laches does not run against an express trust. Piff v. Berresheim (1950) 405 Ill. 617, 92 N.E.2d 113, 118.

In a case related to the instant case, the Fourth District Appellate Court cited Piff v. Berresheim as to limitations, saying:

> The statute of limitations does not begin to run against [an express active] trust until the trust is repudiated or the trust relation between the parties comes to an end. (Citation omitted.) The trust in this case does not terminate until the death of Eleanor D. Lyon, one of the beneficiaries now living. Further, the trust has not been repudiated. Dick v. Peoples Mid-Illinois Corp. (4th Dist. 1990) 195 Ill.App.3d 654, 552 N.E.2d 385,388.

17. Illinois is a fact pleading state. Adkins v. Sarah Bush Lincoln Health Center (1989) 129 Ill.2d 497, 544 N.E.2d 733, 743. The conclusory work "fraud" appears only in the title of Beneficiary Helen A. Dick's "Petition to Vacate

Order(s) Obtained by Fraud upon the Court" (January 11, 1994). The title of said pleading was intended to guide the Court to the understanding that her cause of action against the trustee Bank involves questions as to her Trustee's having obtained one or more orders---in this case---by perpetrating fraud upon the Court.

> In general, Illinois recognizes two classifications of void judgments subject to collateral attack. There are judgments which are void because the trial court lacked jurisdiction over the person or subject matter and (emphasis added) there are judgments which are void because they are procured through fraud. City of Chicago v. Central National Bank (1st Dist. 1985) 134 Ill.App.3d 22, 479 N.E.2d 1040, 1044.

The fraud in question is the fraud perpetrated on the Court by the Trustee Bank.

18. As set forth more fully hereinafter, the Trustee Bank obtained orders which were void because based on a factually false (and thus fraudulent) pleading and because Helen A. Dick was a necessary and indispensable party---but was not a party to the main case at the time such orders were entered.

19. The Nature of the Case was "Will Construction" (page 1 of the Record Sheet).

20. As shown by the facts pleaded in Section B, "As to the Title of the Pleading Filed by the Bank" (at page 4 of the Petition to Vacate filed January 11, 1994) and at paragraph 1 of Section E. and paragraph 1 of Section F. of said Petition (respectively at pages 6 and 11)---Helen A. Dick was not a party to the Bank's Counts I and II for Will Construction. The Bank did not reveal to the Court that Helen A. Dick was a necessary and indispensable party to said counts and did not reveal that any finding against her interests would be moot as to her.

21. Helen A. Dick hereby incorporates her Petition for Change of Venue (filed March 23, 1994) and supporting Memo (filed August 31, 1994).

22. At paragraph 2 of said Memo, Beneficiary Helen A. Dick referred to and attached (Exhibit "R") a copy of Judge Baner's February 22, 1984 Order finding that Helen A. Dick was not a party to any of the counts then remaining in the Bank's action.

23. Pursuant to Rule 3.3 (Conduct Before a Tribunal) of the Illinois Rules of Professional Conduct, which reads in pertinent part:

(a) In appearing in a professional capacity before a tribunal, a lawyer shall not:

***

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.

---at least when Judge Witte stated that courts encourage settlements---"so long as all the appropriate parties are before the Court" (Ex. "Z" p. 42 at 6-12)---either Mr. Fick or Mr. Mair ought to have disclosed authority to the Court, such as the following:

> On a bill for the construction of a will, all persons who are interested in the subject matter of the suit and whose interests will necessarily be affected by the construction of the will and the decree rendered in accordance therewith are not only proper, but necessary and indispensable parties. *** The general rule applies not only because persons interested should be afforded an opportunity to assert or defend their rights, but also to enable the court to render a decree by which they are concluded, and finally to adjudicate the controversy. *** The construction of a will without the presence before the court of parties to be affected by the construction would be a mere academic deliverance---a sort of moot court opinion. 96 C.J.S. Wills, sec. 1088 at p. 765.

> [N]ecessary parties are entitled to be present and to participate (emphasis added) in the litigation of all questions affecting such interest.
>
> *** The decree is binding only on those beneficiaries who were parties to the suit. Oglesby v. Springfield Marine Bank (1944) 385 Ill. 414, 52 N.E.2d 1000, 1006-1007.

In a First District case for will construction, the reviewing court not only found that a beneficiary is a necessary party in a case to construe a will---the court said, "If there was a mistake of fact in the chancery case, that should be corrected in an appropriate proceeding." In re Richmund's Estate (1st Dist. 1953) 1 Ill.App.3d 310, 117 N.E.2d 583, 387.

24. As shown by the facts pleaded at pages 4 through 14 of Beneficiary Helen A. Dick's Petition to Vacate Order(s) Obtained by Fraud upon the Court (filed January 11, 1994), the Trustee Bank's pleading was factually false (and thus fraudulent). In Nash v. Park Castles Apt. Bldg. Corp. (1943) 384 Ill. 68, 50 N.E.2d 725, 729, the court said (of the acts of a receiver who had obtained approval of an allegedly inaccurate and false report) that concealing of misrepresenting facts to the court constitutes fraud upon the court and sufficient grounds for vacating the order even after the term at which it was entered.

25. As set forth in the aforesaid Petition for Change of Venue and supporting Memo (incorporated hereinabove at paragraph 21), a petition to vacate must be filed in the action in which the order was entered---and be brought before the same judge who rendered the original judgment. Lofendo v. Ozog (1st Dist. 1983) 118 Ill.App.3d 237, 454 N.E.2d 806, 810-811, and other authorities cited in said Petition and Memo.

26. A void judgment or order may be vacated at any time and the doctrine of laches or estoppel does not apply. Cash v. Maloney (1949) 402 Ill. 528, 84 N.E.2d 390, 394. Ward v. Sampson (1946) 395 Ill. 353, 70 N.E.2d 325, 327.

27. At paragraph 1 of her said Petition for Change of Venue, Beneficiary Helen A. Dick cited the Code of Civil Procedure (735 ILCS 5-2001), under which a substitution of judge is not available (e.g. to the Trustee Bank) where a judge has (as Judge Baner has) ruled on substantial issues in this case.

27. During the September 1, 1994 proceedings, Mr. Fick made at least two statements of material fact or law which he knew (from the authorities cited in Helen A. Dick's said Petition to Vacate and Memo, if from no other source) were false:

(a) Mr. Fick stated, "I don't believe there is any bar to this Court considering this matter" (Ex. "Z" p. 7 at 10-11);

(b) Mr. Fick stated, "I think it (the issue of whether Judge Witte would hear the matter) is a matter of the Court's discretion" (Ex. "Z" p. 7 at 13-14).

Clearly, Mr. Fick knew that the statute and case law Helen A. Dick had cited did bar Judge Witte from considering the case. Furthermore, Mr. Fick certainly knew that whether or not a court would follow the doctrine of stare decisis was not a matter of a courts discretion!

28. If courts were not expected to follow the doctrine of stare decisis there would be little reason for the existence of reviewing courts---and no logical reason for any cases to be published.

29. Helen A. Dick had failed to disclose any authority as to stare decisis and neither Mr. Fick nor Mr. Mair disclosed authority, such as the following:

> When a rule of law has once been settled, contravening no statute or constitutional principle, such rule ought to be followed unless it can be shown that serious detriment is thereby likely to arise prejudicial to public interests. (Citations omitted.) The rule of stare decisis is founded upon sound principles in the administration of justice. Maki v. Frelk (1968)

40 Ill.2d 193, 239 N.E.2d 445, 447.

Serious detriment is likely to arise against public interests if the Trustee's acts in the instant case are not given the most meticulous and thorough attention possible---which can happen only if the case is returned to Judge Baner who, as Judge Witte commented, would have "a better handle on some of the issues" (Ex. "Z" p. 13 at 20-21). In the instant case, the Trustee is a bank large enough to have its own Trust Department. As Chief Justice Warren Burger wrote, while a Circuit Judge, writing for the District of Columbia Court of Appeals in Brown v. Coates, cited in Allabastro v. Cummons (1st Dist. 1980) 90 Ill.App.3d 394, 413 N.E.2d 86, 89:

> [O]nce it has been shown that one trained and experienced holds himself out to the public as worthy to be trusted for hire to perform services for others, and those so invited do place their trust and confidence, and that trust is intentionally and consciously disregarded, and exploited for unwarranted gain, community protection, as well as that of the victim, warrants the imposition of punitive damages.

Taking the pleaded facts of Beneficiary Helen A. Dick's petition (a verified pleading) as true (Long v. City of New Boston (1982) 91 Ill.2d 456,64 Ill.Dec. 905, 440 N.E.2d 625 ---it is difficult to imagine a more serious breach of fiduciary duty than the Trustee Bank's having perpetrated fraud upon the Court as to Helen A. Dick's beneficial interests. As to punitive damages, see also Obermaier v. Obermaier (1st Dist. 1984) 128 Ill.App.3d 602, 470 N.E.2d 1047, 1053, wherein the reviewing court stated: "Punitive damages are appropriate to punish and deter conduct where defendant is guilty of fraud (citation omitted) or an intentional breach of fiduciary duty (citation omitted)."

30. Mr. Fick's aforesaid false statements of material fact or law were in violation of the Illinois Rules of Professional Conduct, Rule 1.2 Scope of Representation, which reads, in pertinent part:

> (d) A lawyer shall not *** assist a client, in conduct that the lawyer knows is *** fraudulent[.]

and in violation of Rule 3.3 Conduct Before a Tribunal, which reads, in pertinent part:

> (a) In appearing in a professional capacity before a tribunal, a lawyer shall not:
>
> > (1) make a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false[.]

As set forth above, Mr. Fick's and Mr. Mair's failure to disclose authority was in violation of RPC Rule 3.3 Conduct Before a Tribunal (a) (3)----being failure "to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel."

31. Questions as to whether the Trustee Bank breached its fiduciary duty in this litigation (i.e. the above-captioned case) clearly could not have been "at issue" in any case other than this. Anything the Appellate Court may have said regarding this case---in any opinion as to a related case---was mere dictum because a court may not speak authoritatively upon questions not involved in the litigation. Boddiker v. McPartlin (1942) 379 Ill. 567, 41 N.E.2d 756,761.

32. The one thing that is glaringly clear, when viewing the Appellate Court opinions in related cases---is that Beneficiary Helen A. Dick's Trustee (the Bank) never revealed all that she needed to know, including but not limited to the fact that her only chance/hope of obtaining that which she should have---was to file a petition to vacate (as she did on January 11, 1994) the order(s) entered in this case. The fundamental law of trusts requires a trustee to make full and fair disclosure of all material facts; a most rigid duty is imposed on the trustee to deal fairly with beneficiaries in matters relating to the Trust. People ex rel. Barrett, Auditor of Public Accounts v. Central Republic Trust Co. (1st Dist. 1939) 300 Ill.App. 297, 20 N.E.2d 999, 1004.

FOR ALL THE FOREGOING REASONS, Beneficiary

Helen A. Dick prays for a rehearing, and for the Court to vacate and set aside any and all orders (oral, entered on the Record Sheet and/or separately) entered in this cause as a result of the September 1, 1994 proceedings before the Honorable W. Charles Witte---and to enter an order allowing the Verified Petition for Change of Venue to Woodford County (filed March 23, 1994), thus returning the matter to the Honorable Richard M. Baner.

Respectfully submitted,

HELEN A. DICK
Helen A. Dick, pro se

Helen A. Dick
3323 - 13th Ave. Court
Moline, IL 61265
Phone: (309) 762-7014

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased,
Plaintiff,

vs.

GEORGE F. DICK III, et al.,
Defendants

HELEN A. DICK,
Petitioner-Appellant,

vs.

PEOPLES BANK OF BLOOMINGTON,
Respondent-Appellee.

From the Circuit Court of McLean County,

No. 82-CH-124,

The Honorable W. Charles Witte, Judge Presiding.

NOTICE OF APPEAL

TO: Peoples Bank of Bloomington
c/o John E. Fick
Samuels, Miller, Schroeder, Jackson & Sly
406 First of American Center
P.O. Box 1400
Decatur, Illinois 62525

PLEASE TAKE NOTICE that, pursuant to Supreme Court Rule 303, Helen A. Dick (pro se) hereby appeals to the Appellate Court of Illinois, Fourth District, from the Judgment Order entered in this cause on September 26, 1994, and from the November 28, 1994 denial of her Motion for

Rehearing.

Petitioner-Appellant seeks an opinion or order reversing the aforesaid order(s) and finding that the record shows that the Trustee Bank has breached its fiduciary [duty] to Petitioner (Beneficiary Helen A. Dick) in some or all of the following respects---and, thus, the record shows that Petitioner is entitled to the accountings and other relief prayed for in her January 11, 1994 Petition to Vacate Order(s) Obtained by Fraud upon the Court:

(1) The Trustee Bank became trustee of the Estates of George F. Dick, Jr. and Althea M. Dick in December 1978 and never compelled accountings from its predecessor fiduciary (George F. Dick III), including but not limited to the accounting ordered by the trial court in its Order (as to partial summary judgment) entered March 2, 1984.

(2) The Bank has never served as Trustee of either of these trusts with undivided loyalty.

(3) Said trustee Bank commenced this action in September 1982 by filing a false and fraudulent pleading.

(4) The Trustee failed to include Beneficiary Helen A. Dick as a party to Counts I and II for will construction---even though she was a necessary and indispensable party to each and every count for will construction.

(5) After dismissing Beneficiary Helen A. Dick out of the main case in February 1982 (at which time only Counts I, II, III and IV were remaining), the Trustee Bank obtained a March 2, 1982 order for partial summary judgment which was based, at least in part, on the aforesaid false and fraudulent pleading.

(6) The Trustee Bank was not authorized by either will to settle, compromise or abandon claims (and each will was executed prior to October 1, 1973, thus there was no such statutory authority)---but on March 14, 1984, the Trustee presented a dismissal Stipula-

tion to the trial court and obtained an Order of Dismissal over the objection of Beneficiary Helen A. Dick.

(7) Appellate Court opinions in related matters as recent as March 1993 (Dick v. Peoples Mid-Illinois Corp. (4th Dist. 1993) 242 Ill.App.3d 297, 609 N.E.2d 997) show, as does this record, that Beneficiary Helen A. Dick did not know what the remedy was for the Trustee Bank's wrongdoing---thus that the Trustee had failed to inform her as to what her rights were.

(8) In its Motion for Involuntary Dismissal (filed February 3, 1994), the Trustee Bank falsely alleged that Beneficiary Helen A. Dick's Petition to Vacate Order(s) Obtained by Fraud upon the Court was barred---although the Trustee Bank certainly knows that limitations do not apply to express active trusts or to fraud upon the Court---and the Trustee Bank (being a bank with a Trust Department) certainly knows that a trustee may not assert an estoppel (including but not limited to res judicata) against a beneficiary whom it misled and/or failed to inform.

HELEN A. DICK

Helen A. Dick
3323 - 13th Ave. Court
Moline, Illinois 61265
Phone: (309) 762-7014

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, et al., Defendants.	)	

SUPREME COURT RULE 137
PETITION FOR REIMBURSEMENT
FOR ATTORNEYS FEES

NOW COMES Peoples Bank of Bloomington, Plaintiff/ Respondent, by Samuels, Miller, Schroeder, Jackson & Sly, and for its Petition For Reimbursement For Attorneys Fees directed against Petitioner, Helen A. Dick says:

1. Heretofore Peoples Bank has requested relief under Supreme Court Rule 137 on account of the proceeding herein initiated by Helen A. Dick.

2. On January 11, 1994, Helen A. Dick filed a Petition to "Vacate Order(s) Obtained by Fraud upon the Court" in this case She requested as partial relief as follows:

> That the court review the settlement agreement and find that the said agreement/contract is void and/or that the said agreement/contract does not bar Helen A. Dick from filing a counterclaim against the bank.

3. In an opinion filed March 4, 1993 in a case involving

the same parties here, Helen Dick and Peoples Bank, the Fourth District Appellate Court held (*Helen A. Dick v. Peoples Mid-Illinois Corporation, et al.*, 242 Ill.App.3d 297 (1993) (305):

> The only possible set of facts plaintiff [Helen A. Dick] has alleged which could state a cause of action revolves around the bank's [Peoples] failure to disclose to her the circumstances surrounding the settlement agreement and its effect upon her. As we noted above, plaintiff [Helen A. Dick] is absolutely barred from relitigating this issue.

4. Helen Dick's January 11, 1994 action was filed in wilful disobedience to the above holding of the Court in *Dick v. Peoples Bank,* 242 Ill.App.3d 297 (1993).

5. Supreme Court Rule 137 provides in pertinent part:.

> The signature of an attorney or party constitutes a certification by him that he has read the pleading, motion or other papers; that to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or by a goodfaith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

6. Because of the holding in *Dick v. Peoples Bank (supra),* Helen a. Dick is in violation of Supreme Court Rule 137.

7. Expenses and reasonable attorney fees incurred in this cause on account of papers signed and filed in this case by Helen A. Dick amount to $5,275.99, as itemized in Group Exhibit "A".

WHEREFORE, Peoples Bank of Bloomington, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the will of Althea M. Dick, deceased, prays for an award of its reason-

able expenses and attorney fees against Helen A. Dick in the amount of $5,275.99.

PEOPLES BANK OF
BLOOMINGTON, as Successor
of trusts created by the Will of
George F. Dick, Jr., deceased, and as
Trustee of trusts created by the
Will of Althea M. Dick, deceased,
Plaintiff/Respondent

By: SAMUELS, MILLER,
SCHROEDER, JACKSON &
SLY

By: JOHN E. FICK
Its Attorneys

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he believes the same to be true.

JOHN E. FICK
JOHN E. FICK

JOHN E. FICK
SAMUELS, MILLER, SCHROEDER,
JACKSON & SLY
Attorneys for Plaintiff/Respondent
406 First of America Center
P. O. Box 1400
Decatur, Illinois 62525-1400
Telephone: (217) 429-4325

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, et al., Defendants.	)	

TRUST BENEFICIARY HELEN A. DICK'S AFFIDAVIT IN RESPONSE TO HER TRUSTEE'S (PEOPLES BANK'S) PETITION FOR REIMBURSEMENT FOR ATTORNEYS FEES

State of Illinois
County of Rock Island[ss]

I, Helen A. Dick, hereby depose and say that:

1. I have a valid defense against my Trustee's (Peoples Bank's) Petition---but, based upon my experience during and connected with proceedings before Judge W. Charles Witte, of September 1, 1994 and November 28, 1994, I believe that he is so prejudiced in favor of Peoples Bank and/or the one-bank holding company (Peoples Mid-Illinois Corporation) that he would not consider any statute or case law I might cite or any other argument I might present regarding the Bank's petition seeking to be reimbursed for attorney fees in the amount of $5,275.99.

2. Although I cannot financially afford to do so, I am this day buying my peace by sending a Cashier's Check to

Attorney Fick (payable to Peoples Bank of Bloomington) in the amount of $5,276.00. A copy of said check is attached hereto.

HELEN A. DICK

Subscribed and sworn to before me at
Moline, Rock Island County, Illinois,
this 27th day of December 1994.

TAMARA J. DAVIS (Seal)

SAMUELS, MILLER, SCHROEDER, JACKSON & SLY
406 FIRST OF AMERICA CENTER
250 NORTH WATER STREET
P.O. BOX 1400
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WILLIAM M. RICE
OF COUNSEL

THOMAS S. SLY
OF COUNSEL

CHARLES C. LeFORGEE
1867-1951

THOMAS W. SAMUELS
1886-1989

CARL R. MILLER
1904-1986

ESTABLISHED 1888

December 30, 1994

The Honorable W. Charles Witte
Circuit Judge
Law & Justice Center
104 West Front Street
Bloomington, Illinois 61701

In Re: Peoples Bank vs. Dick, et al.
McLean County Case No. 82-CH-124

[Vol. XII, C-4190]

Dear Judge Witte:

By the time this letter reaches you, you will find from reference to the Court file in this case that the Petition of the Peoples Bank of Bloomington for Reimbursement of Attorneys Fees Under Supreme Court Rule 137 was filed herein on or about December 23, 1994 and that in response thereto Trust Beneficiary Helen A. Dick has filed an Affidavit herein on or about December 28, 1994.

Peoples Bank respectfully suggests that the response to its petition for fees by Affidavit by Helen A. Dick who states she submitted payment of the requested fees in full to Peoples Bank moots the issues made in the Bank's petition. Receipt by Peoples Bank of a Cashier's Check, as represented by Helen A. Dick in her Affidavit is acknowledged by the undersigned.

For the purpose of clearing the Court's record, Peoples Bank has prepared an Order, the original of which is submitted herewith. A true copy is furnished on this date to Helen A. Dick.

Peoples Bank respectfully suggests that the Court enter an Order, either the one furnished herein by Peoples Bank or such other or different Order as the Court may deem appropriate so as to document the conclusion of these matters. If Helen Dick has some other or different procedure in mind by which the Court may resolve the issue remaining outstanding in this case other than that proposed by Peoples Bank, we assume she will make the Court aware of it within a reasonable period of time.

Respectfully submitted,

SAMUELS, MILLER, SCHROEDER,
JACKSON & SLY
JOHN E. FICK
By: JOHN E. FICK

JEF:sl
Enclosure
cc: Helen A. Dick (w/encl.)

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff,	)	
vs.	)	NO. 82-CH-124
GEORGE F. DICK III, et al., Defendants.	)	

APPELLEE'S MOTION TO DISMISS APPEAL--RULE 303(a)(2)

NOW COMES PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trust created by the Will of Althea M. Dick, deceased, plaintiff/respondent/appellee, by Samuels, Miller, Schroeder, Jackson & Sly, its attorneys, and for its Motion to Dismiss the appeal herein as provided in Supreme Court Rule 303(a)(2) states:

1. On September 26, 1994, in cause *Peoples Bank of Bloomington, as Successor Trustee, etc., plaintiff, vs. George F. Dick III, et al., defendants,* McLean County Case No. 82-CH-124, Presiding Judge Witte entered an Order which provided in part as follows:

> WHEREFORE, the Motion for Involuntary Dismissal - 735 ILCS 5/2-619(a)(4)(5) of Peoples Bank, plaintiff/respondent, is allowed, and the verified petition of Helen A. Dick, defendant/petitioner, to vacate order(s) obtained by fraud upon the court is hereby denied and judgment is entered herein in favor of Peoples Bank of Bloomington, plaintiff/re-

spondent, and against Helen A. Dick, defendant/petitioner.

> This court retains jurisdiction limited to a consideration of the Peoples Bank of Bloomington's Motion for Attorney's Fees--Supreme Court Rule 137. [Emphasis supplied.]

A true copy of said judgment Order is attached hereto and incorporated herein as Exhibit "A"

2. On September 30, 1994, defendant/petitioner Helen A. Dick ["Dick"] filed a Motion For Rehearing directed to the September 26, 1994 Order aforesaid.

3. On November 28, 1994 the Motion for Rehearing of Dick was denied.

4. On December 2, 1994, Dick filed a Notice of Appeal which commenced these proceedings.

5. On December 23, 1994, plaintiff/respondent Peoples Bank of Bloomington ["Bank"] filed its Supreme Court Rule 137 Petition for Reimbursement for Attorneys fees.

6. On January 4, 1995, the Circuit Court of McLean County entered an Order entitled "Order as to Petition for Reimbursement for Attorneys Fees (Supreme Court Rule 137) of Peoples Bank and Trust Beneficiary Helen A. Dick's Affidavit in Response Thereto." Said Order disposed of the matter reserved in the Order of September 26, 1994 as to the Bank's Petition for Attorneys Fees under Rule 137 and concluded with the following language:

> WHEREFORE, the Court being fully advised in the premises finds the issues made in the Bank's said fee petition have been resolved by the conduct of the parties, and there are no other disputed issues remaining to be determined in this cause. Case closed.

A true copy of the Order of January 4, 1995 aforesaid is attached hereto and incorporated herein as Exhibit "B".

7. Supreme Court Rule 303(a) in part provides as follows:

> (1) except as provided in paragraph (b) below, the

> Notice of Appeal must be filed with the Clerk of the Circuit Court within 30 days after the entry of the final judgment appealed from, or, if a timely post-trial motion directed against the judgment is final, whether in a jury or a non-jury case, within 30 days after the entry of the Order disposing of the last pending post-judgment motion.
>
> (2) When a timely post-judgment motion has been filed by any party...a notice of appeal filed before the entry of the order disposing of the last pending post-judgment motion shall have no effect...A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the post-judgment motion....

8. In *Hager-Freeman v. Spircoff*, 229 Ill.App.3d 262 (1992), the court in interpreting the timeliness of an appeal from a lower court decision from a case in which a petition for attorneys fees under Supreme Court Rule 137 was filed stated as follows:

> (p. 273) ...[Supreme Court Rule 137 provides] attorney fee claims *must* be brought as part of the underlying action and not as a separate action. This is true even though a claim for attorney fee sanctions still may be viewed as a "claim" that is separate from the main relief. The *Marsh* court [*Marsh v. Evangelical Covenant Church* (1990), 138 Ill.2d 458] concluded that even if a judgment fully resolves the underlying litigation, as long as a claim for attorneys fees is outstanding, the judgment may not be appealed *unless* the order appealed from contains the requisite finding of availability pursuant to Supreme Court Rule 304(a).

9. In its September 26 Order, the Court expressly reserved jurisdiction for the purpose of determining Peoples Bank's Supreme Court Rule 137 Motion for Attorneys Fees. It did not include the language of Supreme Court Rule 304(a). The Rule 137 attorney fee issue was not resolved

until the Court entered its Order of January 4, 1995.

10. As there was no finding pursuant to Supreme Court Rule 304(a) in the September 26th Order of the Court (which is the Order toward which petitioner Helen Dick directed her Petition for Reconsideration) the Order denying her post-trial motion did not dispose of all pending matters. Therefore, her only Notice of Appeal which she filed on December 2, 1994, was premature. The issue of Rule 137 attorney fees was not resolved until January 4, 1995.

11. No Notice of Appeal was filed within thirty (30) days of the Order of January 4, 1995, as required by Rule 303(a)(2), ergo this Court lacks jurisdiction of the subject matter of this appeal.

WHEREFORE, Peoples Bank of Bloomington, Plaintiff/Respondent/Appellee prays for dismissal of this appeal and for its costs.

Respectfully submitted,

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff/Respondent/Appellee

By: SAMUELS, MILLER, SCHROEDER, JACKSON & SLY

By: JOHN E. FICK
Its Attorneys

General No. 4-94-1069

IN THE APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT

PEOPLES BANK OF BLOOMINGTON, etc. Plaintiff, vs. GEORGE F. DICK III, et al. Defendants. HELEN A. DICK, Petitioner-Appellant, vs. PEOPLES BANK OF BLOOMINGTON, RESPONDENT-APPELLEE.	)	Appeal from the Circuit Court, McLean County Circuit Court No. 82-CH-124 The Honorable W. Charles Witte, Judge Presiding

MOTION FOR RECONSIDERATION AND TO VACATE ORDER OBTAINED BY FRAUD

NOW COMES TRUST BENEFICIARY HELEN A. DICK, pro se, and moves for reconsideration and for the court to vacate and set aside its March 15, 1994 Order dismissing her appeal. The December 23, 1994 "motion" set forth at paragraph 5 of the Motion to Dismiss Appeal was a nullity---and the Appellate Court does have jurisdiction without special finding (Supreme Court Rule 304 (b)).

A.

Overview as to the Bank's Fraud upon the Appellate Court

1. As set forth more fully hereinafter, the only Supreme Court Rule 137 pleading for attorney fees filed by the Bank that was not a nullity was it pre-trial motion filed February 3, 1994 and referred to in the September 26, 1994 Judgment Order (Vol. XII, C-4083, page A-1 of the Separate Appendix filed with Helen A. Dick's opening brief). An order must be

interpreted within the context of the motion leading to entry of the order. Wyrick v. Time Chemical, Inc. (1st Dist. 1990) 191 Ill.App.3d 1041, 1044. The written order controls regardless of what a judge may or may not have said during the proceedings. Yassin v. Certified Grocers of Illinois (1st Dist. 1988) 178 Ill.App.3d 498, 509. As the record shows, the Bank never filed a motion for leave to withdraw or amend its February 3, 1993 pre-trial "Motion for Attorney Fees - Supreme Court Rule 137" (Vol. XI, C-3837, page A-49 of the Separate Appendix). A party does not have the absolute right to amend pleadings. A motion for leave to amend a pleading must be in writing; state the reason for the amendment; and the opponent must be given notice and an opportunity to present any objections to the application. A document filed without such procedure is a nullity. First Robinson S & L v. Ledo Constr. Co. (5th Dist. 1991) 210 Ill.App.3d 889, 892-893. The "Rule 137"document the Bank filed on December 23, 1994 was a nullity---and filed only with intent to interfere with Helen A. Dick's appeal (her Notice of Appeal having been filed December 2, 1994, Vol. XII, C-4153, page A-4 of the Separate Appendix)---and with intent to defraud the Appellate Court into believing it was a valid post-judgment motion instead of a nullity.

2. The only valid post-judgment motion was Helen A. Dick's September 30, 1994 Motion for Rehearing (Vol. XII, C-4086, page A-101 of the Separate Appendix), which did not even mention sanctions or attorney fees.

3. Said September 26, 1994 Judgment Order (Vol. XII, C-4083, page A-1 of the Separate Appendix) shows that the only thing left for the Bank to do regarding its said (February 3, 1994) pre-trial motion for attorney fees---was to support its said motion by providing documentation of its costs and attorney fees. The Bank prepared/worded said Judgment Order. (The September 8, 1994 transmittal letter and unsigned judgment order are at Vol. XII, C-4073, page A-97 of the Separate Appendix.) The Bank knew it had not moved for leave to amend its pleading for attorney fees---thus its experienced counsel did not include any such provision when wording said judgment order. As set forth above, the written

order controls. Yassin (1st Dist. 1988) 178 Ill.App.3d 498, 509.

4. The only reason for the September 26, 1994 Judgment Order (Vol. XII, C-4083, page A-1 of the Separate Appendix) to have directed the Bank to support its aforesaid pre-trial motion by going to all the trouble of documenting its costs and attorney fees---was that the Bank wanted the Judgment Order to indicate/signal that the only issue still remaining was the issue of the amount (i.e. all or only part of the fees) Helen A. Dick would pay. That matter could not be "at issue" (or unless) the Bank provided such documentation.

5. The record shows that the Bank did not provide such documentation until filing same on Friday, December 23, 1994 (with the aforesaid document which was a nullity, Vol. XII, C-4170, instead of a Verified Statement of Costs and Attorney Fees pursuant to its September 8, 1994 correspondence to Judge Witte, Vol. XII, C-4073, page A-97 of the Separate Appendix). Helen A. Dick paid the full amount on the next business day (Tuesday, December 27, 1994), thus sparing the Bank from incurring additional fees to argue the matter. Her December 27, 1994 Affidavit (Vol. XII, C-4187) is at page A-180 of the Separate Appendix. A copy of the cancelled $5,276.00 Cashier's Check payable to the Bank, which cleared December 29, 1994, is Exhibit "A" attached hereto.

6. As set forth above, the December 23, 1994 "Rule 137" pleading described at paragraph 5 of the Bank's Motion to Dismiss Appeal--was and is a nullity. By referring to it as though it were valid and/or not a nullity---the Bank perpetrated fraud upon the Appellate Court---and thus obtained one more order (as to these estates) by perpetrating fraud upon a court.

7. As set forth below, the matter (except for the issue of whether Helen A. Dick would pay all or only part of the Bank's attorney fees) was appealable without special finding. In any event, there was not possibility of a piecemeal appeal where she had prepared to---and did---pay the full amount virtually by return mail after receiving documenta-

tion. (The Bank could not say that she hadn't paid enough; she could not say that she had paid too much; and an order reciting conduct of the parties is not appealable.)

B.

As to the Trust Relationship

1. The amount of the Bank's alleged liability is great ..---which explains, but does not excuse any of, the Trustee Bank's chicanery. As pleaded at paragraphs 8 and 9 on page 2 of Helen A. Dick's verified "Petition to Vacate Order(s) Obtained by Fraud upon the Court" and as she deposed at paragraphs 4 and 5 of her supporting Affidavit (the Petition, Vol. XI, C-3793, begins at page A-7 of the Separate Appendix; the Affidavit is at page A-45)---attorneys for the Bank told her in mid-1983 that the value of some of the property in question was a million dollars and could be more. It was quite proper for said attorneys to be honest with her---because the Bank was and is her Trustee. Unfortunately, as set forth hereafter, their honesty did not extend to revealing (to her or to Judge Baner) that the Bank's pleading misrepresented facts and concealed facts as to the liability of the Bank (and/or the one-bank holding company) to these estates.

2. The record shows that Helen A. Dick is a Trust Beneficiary appearing pro se---and that the Trustee Bank has not asked that a different trustee be appointed for purposes of litigation. The Trustee Bank thus has not been relieved of its fiduciary duties to her, including but not limited to absolute honesty. As this court has previously said of trustees, quoting Justice Cardozo:

> Not honesty alone, but the punctilio of an honor the most sensitive---is the standard of behavior of a trustee. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the disintegrating erosion of particular exceptions. Britton v. Winger (4th Dist. 1982) 110 Ill.App.3d 230, 233.

A photocopy of a March 31, 1995 quarterly Trust distribution check (payable to Helen A. Dick in the amount of

$161.28) is attached hereto as Exhibit "B" as evidence of the ongoing trust relationship.

3. As set forth above, the September 26, 1994 Judgment Order signed by Judge Witte (Vol. XII, C-4083, page A-1 of the Separate Appendix) was prepared/worded by the Bank and submitted to him (and to Helen A. Dick) with a transmittal letter dated September 8, 1994 (Vol. XII, C-4073, page A-97 of the Separate Appendix). Said Judgment Order contains, among others, the following terms and provisions:

> "This Court retains jurisdiction limited to (emphasis added) a consideration of the Peoples Bank of Bloomington's Motion for Attorneys Fees - Supreme Court Rule 137. The Court directs Peoples Bank to support its Motion by documentation of any cost and attorneys fees claimed reasonably to have been incurred ***."

If said Judgment Order worded by the Trustee Bank was honest and revealed all that Trust Beneficiary Helen A. Dick needed to know in order to protect her interests---then the Appellate Court does have jurisdiction without special finding, pursuant to Supreme Court Rule 304 (b) (3) and/or Rule 304 (b) (1)---as set forth in a separate section below.

4. If, however, the aforesaid Judgment Order worded by the Trustee Bank did not reveal all that Trust Beneficiary Helen A. Dick needed to know in order to protect her interests and/or if it ought to have been worded differently in order to avoid being misleading---it was fraudulent (and the Appellate Court certainly should not reward a Trustee's fraud). A fiduciary's failure to disclose amounts to fraudulent concealment. Chicago Park District v. Kenroy, Inc. (1980) 78 Ill.2d 555, 562. A judgment or order obtained by fraud is void. City of Chicago v. Central National Bank (1st Dist. 1985) 134 Ill.App.3d 22, 26. A void judgment, order or decree may be attacked at any time or in any court---either directly or collaterally without any showing of diligence or meritorious defense (Dec v. Manning (1st Dist. 1993) 248 Ill.App.3d 341, 347)---even for the first time on appeal (Pangano v. Rand Mat. Handling Equip. Co. (1st Dist. 1993)

249 Ill. App.3d 995, 999).

5. Pursuant to the argument set forth in the Trustee Bank's Motion to Dismiss Appeal---it would appear that the Judgment Order prepared/worded by it was intended to be fraudulent in stating that the court retained jurisdiction limited to a consideration of attorney fees. The Bank apparently did not intend for those words to mean what they said ---because its argument was that jurisdiction remained in the Circuit Court even after such fees were paid in full.

C.

Pursuant to Supreme Court Rule 304 (b) (3) and/or 304 (b) (1), the Appellate Court does have Jurisdiction Without a Special Finding.

1. As set forth above (citing case law), an order obtained by fraud is void and may be attacked at any time or in any court (without any showing of diligence or meritorious defense)---even for the first time on appeal.

2. The section of the Code of Civil Procedure entitled "Relief from Judgments" (735 ILCS 5/2-1401) sets forth one procedure for attacking orders or judgments challenged as void (e.g. because obtained by fraud):

> "(a) Relief from final orders and judgments, after 30 days from the entry thereof, may be had upon petition as provided in this Section. Writs of error coram nobis and coram vobis, bills of review and bills in the nature of bills of review are abolished. All relief heretofore obtainable and the grounds for such relief heretofore available, WHETHER BY ANY OF THE FOREGOING REMEDIES OR OTHERWISE, SHALL BE AVAILABLE IN EVERY CASE, BY PROCEEDINGS HEREUNDER, regardless of the nature of the order or judgment from which relief is sought or of the proceedings in which it was entered. ***
>
> ***
>
> (f) Nothing contained in this Section AFFECTS any existing right to relief from a void order or judgment, or to employ any existing method to procure that relief." (Emphasis added.)

The meaning of the word "affect" is:

> "Affect. To act upon; influence; change; enlarge or abridge; often used in the sense of acting injuriously upon persons and things." Black's Law Dictionary (6th Ed. 1990).

A plain reading of said Section 2-1401 shows that all petitions filed in the trial court for relief from orders or judgments that were entered more than 30 days earlier (including but not limited to those challenged as void) are "proceedings hereunder"---but that none of the requirements or restrictions set forth in other subsections (e.g., the 2 year limitation set forth in subsection (c)) can apply to void orders or judgments. Subsection (f) plainly provides that nothing in the entire Section 2-1401 "affects" any other existing right or method. One other existing method is to bring the nullity of an order to the attention of a reviewing court---because a void order may be attacked even for the first time on appeal. Pangano v. Rand Mat. Handling Equip. Co. (1st Dist. 1993) 249 Ill.App.3d 995,999. A void order may be attacked at any time or in any court---either directly or collaterally without any showing of diligence or meritorious defense. Dec v. Manning (1st Dist. 1993) 248 Ill.App.3d 341, 347.

The notes in the old Smith-Hurd (S.H.A. Ch. 110, para. 2-1401) state, as to "Appealability" (at page 614):

> From the 1955 amendments until October 1, 1973, the predecessor of this section contained an additional subsection, which provided "Any order entered denying or granting any of the relief prayed in the petition is appealable." Effective October 1, 1973, that subsection was deleted. The material formerly covered by that subsection had been added to Supreme Court Rule 304 (b) (3) (ch. 110A, ¶ 304 (b) (3)) effective January 1, 1970, pursuant to the policy of covering all matters of appellate practice by rule, and its continued inclusion in this section was therefore unnecessary.

3. On January 11, 1993, Helen A. Dick filed a verified "Petition to Vacate Order(s) Obtained by Fraud Upon the Court" (Vol. XI, C-3793, page A-7 of the Separate Appendix) praying for accountings and for whatever relief the accountings would show she is entitled to. In said petition she alleged facts which (taken as true on a motion to dismiss, Long v. City of New Boston (1982) 91 Ill.2d 456, 463) showed, among other things, that her Trustee (the Bank) had obtained February 1984 and March 1984 orders based on a false and fraudulent pleading which had failed to include her as a party to all counts to which she was a necessary and indispensable party (e.g. the Bank's Counts I and II for will construction as to certain stock shares). Other facts alleged in said verified petition showed that the Bank, in its pleading, had misrepresented facts and had concealed facts as to the liability of the Bank and/or the one-bank holding company (Peoples Mid-Illinois Corporation) to the Estates of George F. Dick, Jr. and Althea M. Dick. Beneficiaries are necessary and indispensable parties and an order or judgment without their presence is moot and/or binding only on persons who were parties to the suit. 96 C.J.S. Wills, sec. 1088 at page 765. Oglesby v. Springfield Marine Bank (1944) 385 Ill. 414, 426 and 430. Judgments are void where the trial court lacked jurisdiction over the person or subject matter and/or where they are procured through fraud (City of Chicago v. Central National Bank (1st Dist. 1985) 134 Ill.App.3d 22, 26) as by concealing or misrepresenting facts to the court (Nash v. Park Castles Apt. Bldg. Corp. (1943) 384 Ill. 68, 76).

4. On September 1, 1994, Judge Witte denied Helen A. Dick's "Verified Petition for Change of Venue to Woodford County" (she had prayed for the matter to be returned to Judge Richard M. Baner, the Judge who had entered the aforesaid February 1984 and March 1984 orders in this case) and allowed the Bank's Motion for Involuntary Dismissal. The September 1, 1994 docket entry did not contain any notation to the effect that a proposed written judgment was to be submitted by the Bank. Judge Witte's oral announce-

ments thus became final when the September 1, 1994 Record Sheet entry was made (Vol. I, C-17, page A-174 of the Separate Appendix)---and September 1, 1994 determined the time allowed for Helen A. Dick to file a notice of appeal or motion for rehearing. Supreme Court Rule 272. Dept. of Public Aid ex rel. Evans v. Lively (5th Dist. 1993) 246 Ill.App.3d 216, ___, 615 N.E.2d 1381, 1383.

5. On September 30, 1994, Helen A. Dick timely filed her Motion for Rehearing (Vol. XII, C-4086, page A-101 of the Separate Appendix), which did not mention sanctions or attorney fees. Neither sanctions nor attorney fees were mentioned during the November 28, 1994 proceedings (Transcript, Vol. XIV). On November 28, 1994, Judge Witte denied her said Motion for Rehearing (Record Sheet entry of November 28, 1994, Vol. I, C-17 a, page A-175 of the Separate Appendix). Again, the Record Sheet entry did not contain any notation to the effect that any proposed written judgment or order was to be submitted---thus November 28, 1994 was the date which determined the time for Helen A. Dick to file a notice of appeal. Supreme Court Rule 272. Dept. of Public Aid ex rel. Evans v. Lively (5th Dist. 1993) 246 Ill. App.3d 216, __, 615 N.E.2d 1381, 1383.

6. December 28, 1994 was the last possible date on which Helen A. Dick could have filed a timely notice of appeal---not only because of the aforesaid November 28, 1994 Record Sheet entry---but also because the denial of her "Petition to Vacate Order(s) Obtained by Fraud Upon the Court" (Vol. XI, C-3793, page A-7 of the Separate Appendix) was appealable without special finding. Her said Petition was, as set forth hereinabove, a petition under section 2-1401 of the Code of Civil Procedure---alleging that the Order(s) had been obtained by fraud. An order obtained by fraud is void. City of Chicago v. Central National Bank (1st Dist. 1985) 134 Ill.App.3d 22, 26. The denial of her said Petition was also a judgment or order entered in a proceeding which finally determined her right and/or status as to property she alleged rightfully belonged to the Estates of George F. Dick, Jr. and Althea M. Dick---and to Trusts created by their Wills (of which she is a beneficiary). Su-

preme Court Rule 304, Appeals from Final Judgments That Do Not Dispose of an Entire Proceeding, thus applies:

> "(b) Judgments and Orders Appealable Without Special Finding. The following judgments and orders are appealable without the finding required for appeals under paragraph (a) of this rule:
>
> (1) A judgment or order entered in the administration of an estate, guardianship, or similar (emphasis added) proceeding which finally determines a right or status of a party.
>
> ***
>
> (3) A judgment or order granting or denying any of the relief prayed in a petition under section 2-1401 of the Code of Civil Procedure.

7. The Trustee Bank's December 23, 1994 "motion" was a nullity and not a valid post-judgment motion, as set forth above. It apparently was filed with intent to defraud the Trust Beneficiary (Helen A. Dick) into withdrawing her December 2, 1994 Notice of Appeal so that she would lose her right to appeal from the aforesaid orders that were/are appealable without special finding.

8. The Bank's Motion to Dismiss Appeal was filed for improper purposes and where (as set forth above) the Bank knew when preparing/wording the September 26, 1994 Judgment Order that it did not have the right to amend its pending pre-trial Rule 137 motion for attorney fees---the Bank's referring to the aforesaid nullity (the December 23, 1994 Rule 137 pleading) as though it were valid---was fraud upon the Appellate Court.

9. As shown above, the Appellate Court's March 15, 1995 Order dismissing the appeal for lack of jurisdiction was obtained by the Trustee Bank's fraud---and should be set aside and vacated. A judgment or order obtained by fraud is void. City of Chicage v. Central National Bank (1st Dist. 1985) 134 Ill.App.3d 22, 26. Nash v. Park Castles Apt. Bldg. Corp. (1943) 384 Ill. 68, 76.

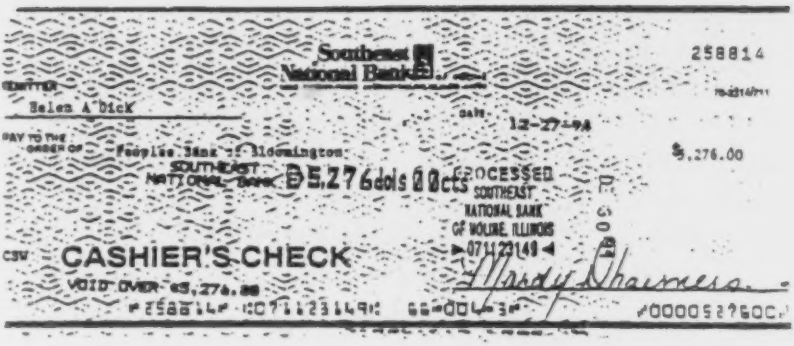
WHEREFORE, Trust Beneficiary Helen A. Dick prays for the Appellate Court to find that it does have jurisdiction,

and for the Court to vacate and set aside its Order of March 15, 1995.

Respectfully submitted,
HELEN A. DICK

Helen A. Dick, pro se
3323 - 13th Ave. Court
Moline, Illinois 61265
Phone: (309) 762-7014

page A-220



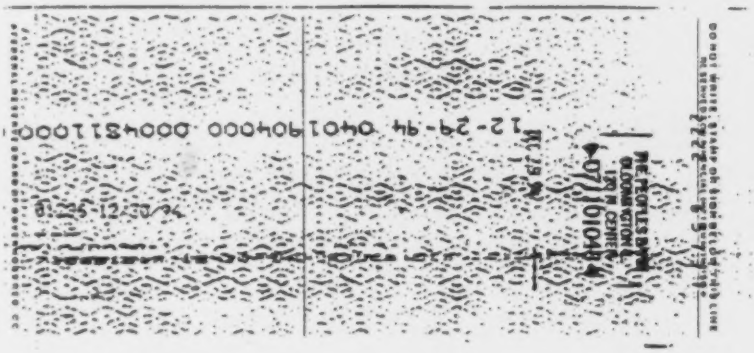


EXHIBIT "A"

BEST AVAILABLE COPY

THE PEOPLES BANK

TRUST DEPARTMENT 073121

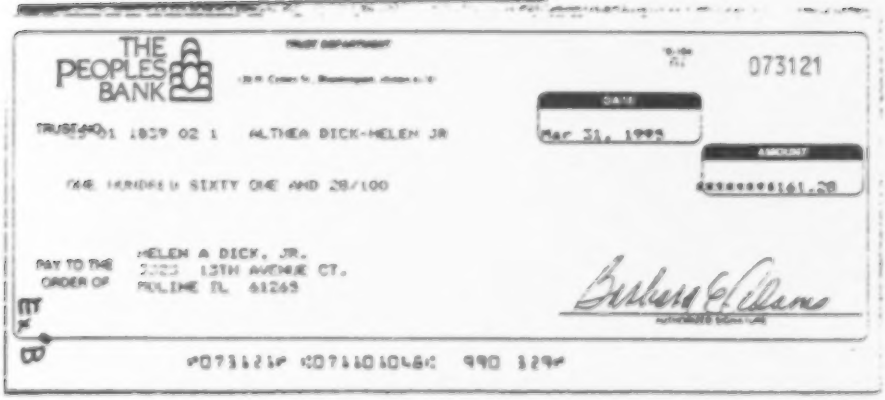
TRUST NO. 23 01 1829 02 1

ALTHEA DICK-HELEN JR

DATE Mar 31, 1995

DESCRIPTION QUARTERLY DISTRIBUTION OF INCOME

AMOUNT $*********161.28


THE PEOPLES BANK

TRUST DEPARTMENT

073121

TRUST NO. 23 01 1829 02 1 ALTHEA DICK-HELEN JR

DATE Mar 31, 1995

AMOUNT $*********161.28

ONE HUNDRED SIXTY ONE AND 28/100

PAY TO THE ORDER OF HELEN A DICK, JR.
2203 13TH AVENUE CT.
MOLINE IL 61265

Barbara E. Williams
AUTHORIZED SIGNATURE

⑈073121⑈ ⑆071401048⑆ 990 1294

EXHIBIT "B"

BEST AVAILABLE COPY

(Seal)
SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
SPRINGFIELD 62708

JULEANN HORNYAK
CLERK OF THE COURT
(217) 782-2035
TELECOMMUNICATIONS
DEVICE FOR THE DEAF
(217) 524-8132

FIRST DISTRICT OFFICE
20TH FLOOR
160 NO. LASALLE ST
CHICAGO 60601
(312) 793-1332
TELECOMMUNICATIONS
DEVICE FOR THE DEAF
(312) 793-1333

October 24, 1995

Ms. Helen A. Dick
3323 - 13th Ave. Court
Moline, IL 61265

In re: Helen A. Dick, petitioner, v. Peoples Bank of Bloomington, respondent. No. 79067

Dear Ms. Dick:

We are returning the enclosed petition for rehearing in the above entitled cause as the Supreme Court Rules make no provision for filing a petition for rehearing of an order of this Court denying a petition for leave to appeal.

The Clerk of the Supreme Court is directed not to accept or file such petitions and is further directed to return them to the tending party or attorney.

Very truly yours,
JULEANN HORNYAK
Clerk of the Supreme Court

JH:as
Enclosure

Helen A. Dick
3323 - 13th Ave. Court
Moline, Illinois 61265
October 30, 1995

Hon. Michael A. Bilandic,
Chief Justice
30th Floor, Richard J. Daley
Center
Chicago, Illinois 60602

Your Honor:

Subsequent to the Illinois Supreme Court's October 4, 1994 denial of my petition for leave to appeal, I prepared and attempted to file a petition for rehearing under Supreme Court Rule 367 (as amended December 17, 1993, effective February 1, 1994).

Acting pursuant to what I believe are outdated directions/ instructions, the Clerk of the Supreme Court refused to accept or file my petition for rehearing. I enclose a copy of my "Affidavit of Filing, Service and Mailing" (showing that it was file-stamped in the Clerk's office on October 24, 1995) and a copy of the Clerk's October 24, 1995 correspondence to me, by which she returned all copies of my eleven (11) page petition.

As you know, under previous terms and provisions of Supreme Court Rule 367, only opinions and Rule 23 orders were subject to the rehearing procedures.

To refresh your memory: by an order entered December 17, 1993 in the Supreme Court of Illinois, Supreme Court Rule 367 was amended by substituting "judgment" for the words "opinion or Rule 23 order," thus modifying paragraph (a) of said rule to read, in pertinent part:

> "A petition for rehearing may be filed within 21 days after the filing of the judgment ***."

Pursuant to said order---as printed and bound in soft-cover with the official reports of Illinois cases---said order included the December 17, 1993 Commentary that the rule "is modified to reflect that all types of reviewing court dispositions are subject to the rehearing procedures and time limits (emphasis added)."

If I am correct, I respectfully suggest that the Supreme Court examine its records to ascertain what other such petitions have been inadvertently returned (to parties or counsel) since the effective date (February 1, 1994) of the aforesaid amendment. It would be in the best interests of justice for this Court to sua sponte correct any such errors by entering nunc pro tunc orders as to the timeliness and propriety of the filing of each such petition, including mine. I presume that a court has a duty to correct its own errors.

Very truly yours,
HELEN A. DICK

Enclosures
cc: Attorney John E. Fick

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
Hon. Michael Bilandic
Supv. Ct Bldg.
Spring St. 60706

4a. Article Number
P 661 449 714 5

4b. Service Type
☐ Registered ☐ Certified
☒ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
NOV 2 1 1995

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: (Addressee or Agent)
X

PS Form 3811, December 1994 — Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
Hon. Michael Bilandic
Richard J. Daley Cntr
30th Fl.
Chi. IL. 60602

4a. Article Number
P 661 449 716 5

4b. Service Type
☐ Registered ☐ Certified
☒ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
11-2-95

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: (Addressee or Agent)
X

PS Form 3811, December 1994 — Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

BEST AVAILABLE COPY

STATE OF ILLINOIS
APPELLATE COURT
FOURTH JUDICIAL DISTRICT

PEOPLES BANK OF BLOOMINGTON, as Successor Trustee of trusts created by the Will of George F. Dick, Jr., deceased, and as Trustee of trusts created by the Will of Althea M. Dick, deceased, Plaintiff, vs. GEORGE F. DICK III, et al., Defendants, (Helen A. Dick, Petitioner-Appellant, vs. Peoples Bank of Bloomington, Respondent-Appellee).	Appeal from the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois, No. 82-CH-124, Honorable W. Charles Witte, Judge Presiding. General No. 4-94-1069 in the Appellate Court, Fourth District.

AFFIDAVIT OF INTENT TO APPLY TO THE UNITED STATES SUPREME COURT FOR A WRIT OF CERTIORARI

State of Illinois
County of Rock Island ss.

I, Helen A. Dick, hereby depose and say that:

1. I am the petitioner-appellant in the above-entitled case.

2. The Illinois Supreme Court's order denying my petition for leave to appeal was entered October 4, 1995.

3. I intend in good faith to file a petition for writ of

certiorari in the Supreme Court of the United States within the time provided by law.

HELEN A. DICK
Helen A. Dick
3323 - 13th Ave. Court
Moline, Illinois 61265
Phone: (309) 762-7014

Subscribed and sworn to before me
at Moline, Rock Island County,
Illinois, this 6th day of November, 1995.

FREDRICA E. RUDOLPH
Notary Public (Seal)

AFFIDAVIT OF FILING, SERVICE AND MAILING

State of Illinois
County of Rock Island ss.

I, Helen A. Dick, hereby depose and say that I placed an original of my foregoing Affidavit of Intent in each envelope addressed as follows:

Illinois Supreme Court
Supreme Court Building
Springfield, Illinois 62706

State of Illinois
Appellate Court
Fourth Judicial District
Supreme Court Building
Springfield, Illinois 62706

Sandra K. Parker, Circuit Clerk
McLean County Law & Justice Center
104 W. Front Street
Bloomington, Illinois 61701

The Honorable W. Charles Witte
McLean County Law & Justice Center
104 W. Front Street
Bloomington, Illinois 61701

John E. Fick
Samuels, Miller, Schroeder,
Jackson & Sly
406 First of America Center
Decatur, Illinois 62525

Reporter of Decisions
P.O. Box 3456
Bloomington, Illinois 61702-3456

---each with proper postage for certified mail fully prepaid

---and by depositing some with an employee of the United States Post Office in Moline, Illinois, at or about 2 P. M. on November 6th, 1995.

HELEN A. DICK

Subscribed and sworn to before me at
Moline, Rock Island County, Illinois,
this 6 day of November, 1995.

FREDRICA E. RUDOLPH (Seal)

CONSTITUTIONAL PROVISIONS, ILLINOIS STATUTES, AND ILLINOIS RULES

A.
Constitutional Provisions

No person shall *** be deprived of *** property, without due process of law ***. (U.S. Const. Amendment 5.)

No State shall *** deprive any person of *** property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (U.S. Const. Amendment 14.)

No capitation, or other direct, tax shall be laid unless in proportion to the census ***. (U.S. Const. Article I, sec. 9, para. 4.)

No State shall, without the consent of the Congress *** enter into any agreement or compact *** with a foreign power. (U.S. Const. Article I, sec. 10, para. 3.)

The United States shall guarantee to every State in this Union a republican form of government ***. (U.S. Const. Article IV, sec. 4,)

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. (U.S. Const. Article I, sec. 1.)

This Constitution *** shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. (U.S. Const. Article VI, para. 2.)

Congress shall make no law respecting an establishment of

religion, or prohibiting the free exercise thereof ***. (U.S. Const. Amendment 1.)

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration. (U.S. Const. Amendment 16.)

B.

As to Illinois Statutes and Illinois Supreme Court Rules

Illinois Compiled Statutes, Chapter 735 (Civil Procedure), Act 5 (Code of Civil Procedure, Section 2-1401 [735 ILCS 5/2-1401] reads, in pertinent part, as follows:

> "Relief from judgments. (a) Relief from final orders and judgments, after 30 days from the entry thereof, may be had upon petition as provided in this Section. Writs of error coram nobis and coram vobis *** and abolished. All relief heretofore obtainable and the grounds for such relief heretofore available, whether by any of the foregoing remedies or otherwise, shall be available in every case, by proceedings hereunder (emphasis added), regardless of the nature of the order or judgment from which relief is sought or of the proceedings in which it was entered. There shall be no distinction between actions and other proceedings, statutory or otherwise, as to availability of relief, grounds for relief or the relief obtainable.
>
> **********
>
> (f) Nothing contained in this Section affects any existing right to relief from a void order or judgment, or to employ an existing method to procure that relief."

Illinois Supreme court Rule 304, Appeals from Judgments That Do Not Dispose of an Entire Proceeding, reads, in pertinent part, as follows:

> "(b) Judgments and Orders Appealable Without Special Finding. The following judgments and orders are appealable without the finding required for appeals under paragraph (a) of this rule:
>
> **********
>
> (3) A judgment or order granting or denying any of the relief prayed in a petition under section 2-1401 of the Code of Civil Procedure."

Illinois Supreme Court Rule 315, Leave to Appeal From the Appellate Court to the Supreme Court provides, in pertinent part:

> "(a) Petition for Leave to Appeal; Grounds. *** Whether such a petition will be granted is a matter of sound judicial discretion. The following *** indicate the character of reasons which will be considered: the general importance of the question presented ***."

Rule 367, Rehearing in Reviewing Court, was amended by the Illinois Supreme Court's December 17, 1993 Order (printed in the Official Reports of the Illinois Supreme and Appellate Courts' Combined Advanced Sheets, December 22, 1993, Vol. No. 26) to read, in pertinent part:

> "(a) Time; Length. A petition for rehearing may be filed within 21 days after the filing of the judgment ***."

Said December 17, 1993 Order contained the Commentary that, "The rule is modified to reflect that all types of reviewing court dispositions are subject to the rehearing procedures and time limits ***."

//////////